

1 HONORABLE LAUREN KING
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6 **IN THE UNITED STATES DISTRICT COURT FOR THE
7 WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

8 BEVERLY JANE CARY,
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10 Debtor,

11 BEVERLY JANE CARY
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13 vs.
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15 PATCH SERVICES, LLC d/b/a
16 NOAH; PATCH HOMES, INC.;
17 FIRST AMERICAN TITLE
18 INSURANCE COMPANY LENDERS
19 ADVANTAGE,
20
21 Defendants.

22 Dist Ct. Case 2:22-cv-00538-LK
23 Chapter 13 Case No. 20-12450 TWD
24 Adversary Case No.
25 PLAINTIFF'S MOTION FOR LEAVE TO
FILE THIRD AMENDED COMPLAINT
NOTED FOR CONSIDERATION:
June 24, 2022

26 **I. INTRODUCTION / RELEVANT FACTS**

27 Defendant First American Title Insurance Company (“FATIC”) asserts in their Motion to
28 Dismiss for Failure to State a Claim, that the Second Amended Complaint (the “SAC”) filed on
29 March 4, 2022 was filed inappropriately without leave of court (Dkt No. 10 at p. 2), This
30 argument is also made in FATIC’s Motion to Strike Second Amended Complaint (Dkt No 12).
31 Additionally, FATIC argues in its Motion to Dismiss for Failure to State a Claim that the Sixth
32 Cause of Action for violation of the Escrow Agent Registration Act (the “ERA”), RCW 18.44 *et*
33 *seq.*, is not an actionable claim for a private individual, that the SAC does not allege any
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1 fraudulent allegations and that a pure violation of the ERA statute cannot be a *per se* violation of
 2 the Washington's Consumer Protection Act ("CPA"), RCW 19.86 *et seq.*, (*Id.* at p. 5) It further
 3 alleges that claims under the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601, *et seq.* fail as a
 4 matter of law ((*Id.* at p. 5)). To address these issues, Plaintiff moves for leave to file her Third
 5 Amended Complaint, to add additional facts that will clarify her claims against FATIC and Patch
 6 Services, LLC d/b/a Noah and Patch Homes, Inc. (the "Patch Defendants") related to the ERA,
 7 the CPA violations based on the unlawful imposition of the mandatory arbitration clause
 8 prohibited under TILA, and to substantiate Plaintiff's damages and injury claims. Ms. Cary's
 9 Motion seeking leave to amend now should simplify the Court's review of FATIC's Motion to
 10 Dismiss, as it should resolve a number of issues addressed in that Motion.

11 **II. BACKGROUND**

12 **A. Procedural History.**

13 Plaintiff filed her Complaint in this case on January 18, 2022 in the Western District of
 14 Washington, U.S. Bankruptcy Court as an Adversary Proceeding under Adv. Case No. 2-01000-
 15 TWD. *See* Ex. 1 to Request for Judicial Notice¹. On February 19, 2022, Plaintiff filed an
 16 Amended Complaint which in hindsight should have been filed as a praecipe, as it was only
 17 filed to make clear that the Complaint was also an Objection to Claim under the Bankruptcy
 18 Code along with other minor technical changes. *Id.*, Ex. 2 at p. 2. Thereafter, the SAC was filed
 19 on March 4, 2022 with substantive changes and only that version of the Complaint was served
 20 on all Defendants on March 09, 2022. *Id.*, Ex. 3. A review of FRBP 7015, which incorporates
 21 FRCP 15, only requires a Motion for Leave to Amend a Complaint: (A) 21 days after serving it,
 22 or (B) if the pleading is one to which a responsive pleading is required 21 days after service of a
 23 responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever
 24

1 is earlier. FRBP 7015(a)(1). Since none of the Defendants had been served when the SAC was
 2 filed, no responsive pleadings had been filed and only thirteen (13) days had passed since the
 3 filing of the first Amended Complaint. It did not appear to Plaintiff that a motion for leave to
 4 amend was required. *Id.* After the SAC was filed, Plaintiff specifically referenced it as a
 5 “Second Amended Complaint” in a Letter Requesting Reissuance of the Summons. *Id.*, Ex 5. A
 6 second Summons was issued by the Court on March 07, 2022 and service was initiated on
 7 behalf of Plaintiff right away. *Id.* Ex. 5. Since then, the parties conferred and stipulated to the
 8 Allowance of Withdrawal of the Reference to this Court on April 15, 2022. *Id.*, Ex. 6. This
 9 Court entered its Order withdrawing the reference on May 18, 2022. *Id.*, Ex. 7. During this time
 10 period, the Patch Defendants also filed an Answer to the SAC with the Bankruptcy Court on
 11 April 29, 2022. *Id.*, Ex. 8.

12 **B. Changes in the Third Amended Complaint.**

13 The Proposed Third Amended Complaint (“TAC”), attached hereto as Exhibit A, includes
 14 language edits in the caption and the first paragraph to clarify the intended claims under the
 15 ERA, and changes to clarify the role of FATIC in the transaction with the Plaintiff. *See* Exhibit
 16 A at ¶¶ 2.28 and 2.29. Additional factual details about the damages and injury asserted by
 17 Plaintiff are clarified, along with substantial changes to the Sixth Cause of Action for violations
 18 of the ERA to make clear that the violations of the CPA asserted were not pled as *per se* CPA
 19 violations. *See Id.* at ¶¶ 3.29 and 3.30. *See also*, Exhibit B, which is a red-lined version of the
 20 TAC. Notably, there was no *per se* language used in that Cause of Action in the SAC, but since
 21 FATIC apparently read that into the pleadings, Plaintiff sought to make this even more clear.
 22 Other substantive changes include some clarifying language in the Ninth Cause of Action
 23 regarding FATIC’s CPA violation regarding the imposition of an arbitration clause. *See Id.* at ¶¶
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1 3.44 and 3.47. With these changes, Plaintiff now timely requests leave to file this Third
 2 Amended Complaint.

3 **III. ARGUMENT**

4 When more than twenty-one days have passed since service of the original complaint, or
 5 when more than twenty-one days have passed after service of a responsive pleading or after service
 6 of a motion under Fed. R. Civ. P. 12(b), (e), or (f), a plaintiff may amend his or her pleading only
 7 with the opposing party's consent or upon obtaining leave of court. Fed. R. Civ. P. 15(a)(2).

8 Because there has not yet been an Order entered in this case setting a case schedule with a
 9 deadline for amended pleadings, the only civil rule that applies to this Motion is Rule 15.¹ "Under
 10 Rule 15, the court should 'freely give' leave to amend a pleading 'when justice so requires.'"

11 *Espinoza*, 2019 WL 5079950, at *2. This policy is "to be applied with extreme liberality."

12 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003).

13 Five factors are used to assess the propriety of a motion for leave to amend: (1) bad faith,
 14 (2) undue delay, (3) prejudice to the opposing party (4) futility of amendment, and (5) whether the
 15 party has previously amended its pleading. *Espinoza*, 2019 WL 5079950, at *3 (citation omitted).
 16 Of these factors, the consideration of prejudice to the opposing party carries the greatest weight.

17 *Eminence Capital, LLC*, 316 F.3d at 1052 (9th Cir. 2003).² If a court does not find prejudice or a
 18 "strong showing," there is a "presumption" under Rule 15 in favor of granting leave to amend. *Id.*
 19 Prejudice must be substantial for leave to be denied. *Morongo Band of Mission Indians v. Rose*,

20
 21 ¹ Where there has been an amended pleading deadline established by a case scheduling order,
 22 under Fed. R. Civ. P. 16, a party who seeks to amend its pleadings subsequent to that deadline
 23 must show good cause to justify a modification of the case schedule. *Espinoza v. City of Seattle*,
 24 No. C17-1709JLR, 2019 WL 5079950, at *2 (W.D. Wash. Oct. 9, 2019).

25 ² Delay alone is generally insufficient justification for denying a motion to amend unless the court
 26 also specifically finds prejudice to the opposing party, bad faith of the party seeking to amend, or
 27 futility of amendment. *Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 1999).

893 F.2d 1074, 1079 (9th Cir. 1990).

A. Plaintiff Is Entitled To Amend Her Complaint Because There is No Evidence of Bad Faith or Dilatory Motive.

The Defendants will suffer no prejudice if the Court grants Plaintiff's request to file her Third Amended Complaint. Discovery has not commenced, and there is still no case scheduling order, discovery deadline, or trial date. The FATIC Defendants have not yet answered Plaintiff's SAC and need not answer it pending the Court's resolution of this Motion. The Patch Defendants did file an Answer on April 29, 2022 in the bankruptcy case (Dkt. 13), but they would be permitted to amend their Answer if this Court grants Plaintiff's Motion. FRCP 15(a)(3). Additionally, in light of FATIC's pending Rule 12(b)(6) motion, the Court's approval of this motion may alleviate many of the issues in the that motion and in any event, under the Rule 12(b)(6), leave to amend should be liberally granted. For Rule 12(b)(6) motions, a court must assume the truth of the facts pled in the complaint and construe all reasonable inferences drawn from these facts in the plaintiff's favor. *See Gen. Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir.1989).

B. Plaintiff Is Entitled To Amend Her Complaint Because Defendants Will Not Be Unduly Prejudiced.

Defendants will not be prejudiced by Plaintiff's TAC because the liberal concept of the complaint is to make the Defendants aware of the facts. Accordingly, a plaintiff is not bound by the legal theories originally alleged unless a defendant is prejudiced on the merits. The party opposing the amendment bears the burden of showing prejudice. Public policy favors disposition of cases on the merits. *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir.1998). Here the factual allegations were known and the allegations were simply clarified

and pled with more specificity. Defendants also cannot be prejudiced or caught off guard by the new facts alleged by Plaintiff in the proposed TAC, since Defendants have first-hand knowledge of the roles that they played in Plaintiff's transaction. Even should Defendants assert some prejudice resulting from Plaintiff's proposed amendments, the level of prejudice is less than compelling given the fact that the Defendants would be considerably disadvantaged if FATIC were not a party to this lawsuit since its role is significant in the actions complained of. Further, Defendants will not be prejudiced because Plaintiff's proposed amendments do not impair their ability to proceed to trial nor threaten to interfere with the rightful decision of the case. *Malone v. United States Postal Serv.*, 833 F.2d 128, 131 (9th Cir.1987). Thus, this factor weighs in favor of allowing Plaintiff's amendment.

C. Plaintiff Is Entitled To Amend Her Complaint Because Those Amendments Would Not be Futile.

Plaintiff’s proposed amendments are not futile. As the TAC makes clear, Plaintiff has plausible allegations that are clarified in this TAC and address many of the issues in FATIC’s Motion to Dismiss and approval of this motion would serve judicial economy. *See Exhibit A.* Also, courts do not look to the validity of a proposed pleading in deciding whether to grant leave to amend. *SAES Getters S.P.A. v. Aeronex, Inc.* 219 F.Supp.2d 1081, 1086 (SD CA 2002) (citing text). In determining futility, courts apply the same standard governing Rule 12(b)(6) motions to dismiss: i.e., a proposed amendment is futile if it “does not plead enough to make out a plausible claim for relief.” *HSBC Realty Credit Corp. (USA) v. O’Neill* (1st Cir. 2014) 745 F3d 564, 578. Granting leave to amend and effectively mooted out much of the Rule 12(b)(6) motion is appropriate if the complaint’s “deficiencies can be cured with additional allegations that are ‘consistent with the challenged pleading’ and that do not contradict the allegations in the original

1 complaint.” *United States v. Corinthian Colleges*, 655 F3d 984, 995, (9th Cir. 2011).

2 In this case, leave to amend is warranted because any deficiencies can be cured with
3 Plaintiff’s additional allegations that are consistent with and that do not contradict the
4 allegations in the previous Amended Complaints.

5 **D. Plaintiff Is Entitled To Amend Her Complaint Because There Is No Evidence
6 of Repeated Failure to Cure Deficiencies.**

7 Plaintiff’s First Amended Complaint was filed merely to correct a defective case
8 caption and to add an allegation that the Complaint was meant to also be an Objection to a filed
9 Proof of Claim in Bankruptcy Court. The SAC was the only prior substantive amendment of the
10 Complaint. Moreover, the amendments were filed first and only the SAC was served on the
11 Defendants. Any failure to previously ask the Court for leave to amend was due to interpretation
12 of FRBP 7015 by Plaintiff’s counsel which incorporates FRCP 15. If the Court finds that was a
13 misreading of that rule, this Motion for Leave to Amend should cure any defect and avoid any
14 procedural irregularities. Thus, there is no basis to conclude that Plaintiff has repeatedly failed
15 to cure deficiencies by previous amendments. Accordingly, in the interest of justice, this Court
16 should grant Plaintiff’s Motion for Leave to File the proposed TAC. The grant of this motion is
17 particularly appropriate here, given the clear absence of any substantial reason to deny leave to
18 amend.

19
20 **IV. CONCLUSION**

21 For the foregoing reasons, Plaintiff requests that the Court grant her leave to file the
22 attached Third Amended Complaint.

23 //
24 //
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1 DATED: June 2, 2022
2

3 Respectfully submitted by:
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5 LAW OFFICE OF MARK CLURE, PS
6

7 By: /s/ Mark C. McClure
8 Mark C. McClure, WSBA #24393
9 Attorney for Plaintiff
10

11 LAW OFFICES OF MELISSA A. HUELSMAN, P.S.
12

13 By: /s/Melissa A. Huelsman
14 Melissa A. Huelsman, WSBA #30935
15 Attorney for Plaintiff
16

17 HENRY & DEGRAAFF, PS
18

19 By: /s/Christina L. Henry
20 Christina L. Henry, WSBA #31273
21 Attorney for Plaintiff
22

23 ¹ Request for Judicial Notice filed by Plaintiff herewith.
24
25

EXHIBIT A

1 THE HONORABLE LAUREN KING
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6 **IN THE UNITED STATES DISTRICT COURT FOR THE**
7 **WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

8 BEVERLY JANE CARY,

9 Debtor.

10 BEVERLY JANE CARY,

11 Plaintiff,

12 v.

13 PATCH SERVICES, LLC d/b/a
14 NOAH; PATCH HOMES, INC.;
15 FIRST AMERICAN TITLE
16 INSURANCE COMPANY
17 LENDERS ADVANTAGE,

18 Defendants.

Dist Ct. Case 2:22-cv-00538-LK

Chapter 13 Case No. **20-12450 TWD**

Adversary Case No.

[PROPOSED]
THIRD AMENDED COMPLAINT:

- (1) TO DETERMINE NATURE AND EXTENT OF LIEN, IF ANY AND TO QUIET TITLE;
- (2) VIOLATION OF RCW 31.04, *et seq.*, WA CONSUMER LOAN ACT, WHICH CONSTITUTES A *PER SE* VIOLATION OF THE WA CONSUMER PROTECTION ACT, RCW 19.86, *et seq.*;
- (3) WA USURY STATUTE, RCW 19.52, *et seq.*, WHICH CONSTITUTES A *PER SE* VIOLATION OF THE WA CONSUMER PROTECTION ACT, RCW 19.86, *et seq.*.
- (4) WA CONSUMER PROTECTION ACT, RCW 19.86, *et seq.*;
- (5) INTENTIONAL AND NEGLIGENT MISREPRESENTATION;
- (6) CONSUMER PROTECTION ACT, RCW 19.86, *et seq.*, VIOLATION BASED UPON VIOLATIONS OF THE WA ESCROW AGENT REGISTRATION ACT, RCW 18.44, *et seq.* AND OTHER ACTIONS;
- (7) VIOLATIONS OF THE TRUTH IN LENDING ACT, 15 U.S.C. § 1601, *et seq.*;
- (8) VIOLATIONS OF THE TRUTH IN LENDING ACTION, 15 U.S.C. § 1639c(e)(3);

27
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(9) WA CONSUMER PROTECTION ACT, RCW 19.86, *et seq.* RE: UNLAWFUL ARBITRATION CLAUSE;
 (10) OBJECTION TO CLAIM 11

5 COMES NOW Debtor and Plaintiff Beverly Jane Cary to pursue her claims that
 6 Defendants' joint and several acts constituted violations of numerous Washington statutes,
 7 including the Consumer Loan Act, RCW 31.04, *et seq.* ("CLA"), which constitutes a *per se*
 8 violation of the Washington Consumer Protection Act ("CPA"), RCW 19.86, *et seq.*; stand
 9 alone violations of the Consumer Protection Act, RCW 19.86, *et seq.*, including a violation
 10 which is related to violations of the Escrow Registration Agent Act, RCW 18.44, *et seq.* and
 11 other actions; violations of the Usury statute, RCW 19.52, *et seq.*; Intentional and Negligent
 12 Misrepresentation; to Quiet Title as against the PATCH Defendants' unlawful lien; violations
 13 of the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, including 15 U.S.C. § 1639c(e)(3) and
 14 form the basis for her Objection to Claim and avoidance of the PATCH Defendants' Deed of
 15 Trust.

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I. PARTIES, JURISDICTION AND VENUE

1.1 Defendant PATCH HOMES, INC d/b/a NOAH, referred to herein as
 ("PATCH") was formed under the laws of the state of Delaware. Defendant PATCH was not
 registered with the Washington Secretary of State as a foreign corporation until **September 5, 2019**. Its nature of business was listed as "Home Equity". It became inactive on January 5, 2021 due to not filing the requisite documentation with the Washington Secretary of State. Defendant PATCH is not licensed with the Washington Department of Financial Institutions ("DFI") as a consumer lender, as required by RCW 31.04.025(1); 31.04.035(1). Defendant

1 PATCH did register with the Washington Department of Revenue but there are no records
2 indicating it has ever paid taxes for conducting business in the State of Washington.

3 1.2 Defendant PATCH SERVICES, LLC (“Patch Services”) is a Delaware limited
4 liability company that was registered with the Washington Secretary of State as a foreign LLC
5 on March 9, 2021. Its nature of business is listed as “Financial Servicers Provider”. Defendant
6 Patch Services is not licensed by Washington DFI as a consumer lender or loan servicer.
7

8 Defendants PATCH and Patch Services appear to interchangeably use their names in
9 the subject loan documents referring to themselves or being referred to as either “lender” or
10 “investor”.

11 1.3 Defendant FIRST AMERICAN TITLE INSURANCE COMPANY LENDERS
12 ADVANTAGE (“Lenders Advantage”) appears to be licensed in Washington state with the
13 Office of the Insurance Commissioner using only the name FIRST AMERICAN TITLE
14 COMPANY. It acted as an escrow agent in connection with the loan closing of the subject
15 transaction. Ms. Cary will be investigating its licensing in Washington state to make certain
16 that it is compliant such that it could act as an escrow agent in Washington. In connection with
17 that closing, Defendant Lenders Advantage required Beverly to sign an Escrow Agreement
18 which includes a mandatory arbitration clause. Mandatory arbitration clauses are expressly
19 prohibited under federal law in connection with residential mortgage loans which are the
20 principal dwelling of the borrower. Other entities in the making of the loan, such as escrow
21 companies, cannot assist lenders in trying to avoid that requirement by including a mandatory
22 arbitration clause in other contractual terms.
23

25 1.4 **Jurisdiction.** This adversary proceeding is commenced pursuant to BR
26 7001 *et seq* and 11 U.S.C §§ 502 (b)(1) and 506 (d). Although an adversary proceeding brought
27

1 as an objection to claim with a counterclaim is a core proceeding under 28 U.S.C. §§
 2 157(b)(2)(B), (K) and/or (O) with non-core matters. Since the issues raised in this adversary
 3 proceeding include counterclaims that go beyond resolution of the claim itself, this matter is a
 4 non-core claim that lies beyond the scope of the creditor's proof of claim. Thus, outside of the
 5 bankruptcy context, many of the claims would not otherwise *require* adjudication in an Article
 6 III Court. *See, Stern v. Marshall*, 564 U.S. 462, 496-98 (2011) (finding that a bankruptcy court
 7 had no constitutional power to evaluate the debtor's common law tort counterclaims because
 8 such claims were beyond the scope of the creditor's proof of claim and were claims of a nature
 9 that required an Article III court's adjudication).

10 1.5 **Jurisdiction.** The Plaintiff is also requesting a jury trial and does not consent to
 11 have the jury matters heard in bankruptcy court and does not waive her rights. *Granfinanciera,*
 12 *S.A. v. Nordberg*, 492 U.S. 33, 41 (1989).

13 1.6 **Venue.** Venue is proper pursuant to 28 U.S.C §§ 1408 and 1409.

14

16 **II. FACTS**

17 2.1 Beverly is a single woman who has lived in King County for most of her life.
 18 She has one daughter, Alycia, who is currently 34 years old. Alycia's son Kameron is now 7
 19 years old and been diagnosed as autistic. The two of them have lived with Beverly since 2015.

20 2.2 She worked for Delta Airlines as flight attendant for 31 years and she retired on
 21 December 1, 2001, after receiving a payout offer from Delta following the September 11
 22 crashes. She received a monthly pension payment from Delta until she reached the age of 62
 23 when it was reduced due to her beginning to receive Social Security. She still receives some of
 24 her pension income along with her Social Security, but her income is not substantial. Between
 25 the ages of 52 and 62, she also worked jobs at Home Depot, Chicos and the like to earn some
 26

1 extra money and increase future Social Security earnings.

2 2.3 In 1998, Beverly had a custom home built for her in Maple Valley, which she
3 sold in 2006 in order to downsize. She made a profit of approximately \$210,000.00. She
4 decided to rent for awhile and in 2007, she purchased her current residence, located at 27834
5 31st Place South, Auburn, WA 98001-1819 (“Property”) by putting down \$150,000.00. She
6 obtained a traditional mortgage to make the purchase and made the monthly payments while
7 living in it until September 2009, when she moved to Florida to be near her closest friend and
8 take a break from the Pacific Northwest. She could not sell the Property at that time without
9 taking a significant loss due to the collapsed housing market. Instead, she rented it out and used
10 those funds to make the mortgage payments.

12 2.4 Beverly returned to Washington in 2012 because her daughter was talking about
13 getting married and it was time to come home. She rented a place while continuing to rent out
14 the Property until August 2015. In September 2015, Alycia, Kameron and Alycia’s husband
15 Rick moved in. Later in 2015, Beverly refinanced the Property in order to reduce her interest
16 rate from 6.35% to 4.56%. This resulted in a new mortgage with a balance of \$110,000.00 and
17 a monthly payment of \$879.00.

19 2.5 By 2018, Beverly had very significant credit card debt and needed to get it under
20 control, so she refinanced the Property again and ended up with a payment of \$1,150.00 per
21 month after she was paid off approximately \$50,000.00 in other debt.

23 2.6 The reason Beverly was struggling financially and incurring significant credit
24 card debt is because of unlawful charges incurred in her name by her daughter Alycia. Even
25 after the 2018 refinance, her credit card debt and balance on her car loan was approximately
26 \$62,000.00, some of which was attributable to fraudulent charges by Alycia on her credit cards

1 and from Alycia stealing her debit card and making unauthorized withdrawals.

2 2.7 Alycia's drug problems began when she fell at work and seriously injured her
 3 back. She had unsuccessful back surgeries, including a failed spinal fusion in 2013. As a result,
 4 she became addicted to pain killers, which began to destroy her life. Beverly did not realize the
 5 problems Alycia was having with the drugs until she moved into her home in September 2015.
 6 Once Alycia and her husband moved in with her, they began borrowing money from her for
 7 legitimate purposes, but it also became apparent that Alycia was also using the money for drugs
 8 as well. Beverly found herself devastated by her daughter's addiction and her efforts to deal
 9 with it, but also the financial damage Alycia's actions continued to cause Beverly.

10 2.8 Compounding Beverly's stress was that Alycia went to rehab once and a detox
 11 place three times beginning in 2020 and nothing worked to stop her addiction. Alycia and Rick
 12 separated about a year after they moved in and they were fighting over custody of her grandson
 13 Kameron. Beverly helps care for Kameron and he has some serious problems. He was born
 14 premature with lung damage and has been diagnosed as autistic. All of this just makes the
 15 pressures on her almost unbearable.

16 2.9 Beverly's financial problems became exacerbated as Alycia continued to use her
 17 credit and debit cards without permission and in spite of Beverly's efforts to prevent her from
 18 having access to them. She also stole checks and gained access to Beverly's VENMO account
 19 to steal more money. Alycia kept running up very significant debt in Beverly's name again and
 20 again. While Beverly was stressing out in 2019 about how she would ever be able to pay off the
 21 debt and knowing that it was unlikely she could obtain a traditional refinance, she was attracted
 22 by a mailing she received from PATCH Defendants. The appeal of the advertisement from
 23 Defendant PATCH was that the loan could close in two to three weeks and the promise of
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1 providing a loan to people who could not get traditional loans. Because Beverly was desperate
 2 for a loan that would relieve the financial pressures she was facing, a quick closing without
 3 traditional underwriting was very attractive.

4 2.10 Alycia became aware that Beverly was considering entering into the loan with
 5 PATCH Defendants and was pressuring her to get it. She was desperate and believed that no
 6 other options that included saving her home existed. She was also about to turn 70 and
 7 believed she wouldn't be able to work her way out of her desperate financial situation.
 8
 9 Defendant PATCH offered very slick advertising and enticed Beverly into reaching out. Bev
 10 called the telephone number on the Defendant PATCH mailer but does not specifically
 11 remember with whom she spoke. The PATCH Defendants offered her what she interpreted as a
 12 loan since they were going to give her money to pay off her unsecured debt and she would have
 13 to repay it plus interest at a later date. This was no ordinary loan, however, and Beverly did not
 14 receive any disclosures in advance of entering into the loan which she could assess or analyze
 15 in order to understand the loan terms.
 16

17 2.11 While the PATCH Defendants entitle and describe their contract as a "Purchase
 18 Option Agreement" and repeatedly disavows that it is a loan, the documents provided by the
 19 escrow company, Defendant Lenders Advantage, to Beverly for signing referred to the
 20 documents as a "loan" and the proceeds as "Loan Amount" approximately 118 times. In
 21 numerous places throughout the documents drafted and presented to Beverly for signature by
 22 Defendant PATCH, there are references to amounts financed, fees and charges that Beverly
 23 must re-pay or pay outright that are solely for the benefit of the PATCH Defendants and to
 24 increase its profit when it obtains repayment of the amounts advanced to Beverly, as well as its
 25 profit from the transaction.
 26

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1 2.12 PATCH Defendants did not suggest that Beverly should look at other options to
 2 deal with her credit cards including credit counseling, seeking a further traditional refinance,
 3 credit counseling, a reverse mortgage, or to discuss her situation with a bankruptcy attorney.
 4 While PATCH is not obligated to have these discussions, it is important in this instance since
 5 their product was being represented as not a loan at an effort in inducing her to choose it,
 6 instead of the other options. In fact, Beverly does not recall any of the discussions she had with
 7 PATCH Defendants wherein anyone told her she had the right to have the loan documents
 8 reviewed by an attorney. She has now been made aware that the documents she signed
 9 contained that language, but she has no memory of seeing it.

10 2.13 Most importantly, Beverly did NOT receive the loan disclosures required under
 11 federal and state lending laws in advance of the loan signing. Instead, she was provided with
 12 alleged summaries of the documentation that no layperson would ever be able to actually
 13 understand and certainly no layperson would ever be able to understand the true cost associated
 14 with the making of this loan, nor of the risk of loss of homeownership that is very real given the
 15 outrageous terms. 12 C.F.R. § 1024.2(b) defines a “federally regulated mortgage loan” as
 16 follows:

17 Federally related mortgage loan means:

- 18 (1) Any loan (other than temporary financing, such as a construction loan):
 19 (i) That is secured by a first or subordinate lien on residential real property,
 20 including a refinancing of any secured loan on residential real property, upon
 21 which there is either:
 22 (A) Located or, following settlement, will be constructed using proceeds of the
 23 loan, a structure or structures designed principally for occupancy of from one to
 24 four families (including individual units of condominiums and cooperatives and
 25 including any related interests, such as a share in the cooperative or right to
 26 occupancy of the unit);
 27

12 C.F.R. § 1024.2(b). Ms. Cary's loan meets that definition.

2.14 Under federal law, creditors may not generally exclude charges from the disclosed finance charge that are payable by the consumer incident to the extension of credit as required by 15 U.S.C. § 1605 and Regulation Z § 1026.4. If the creditor fails to include such a charge, it improperly discloses the finance charge in violation of 15 U.S.C. § 1638(a)(3) and Regulation Z § 1026.18(d). If the PATCH Defendants had actually calculated the annual percentage rate (APR) and disclosed it in advance of the making of the loan, as required by the Truth in Lending Act, the rate would have been based upon improperly calculated and undisclosed finance charges and an overstated amount financed in violation of 15 U.S.C. § 1606, Regulation Z § 1026.22. A creditor also unlawfully understates the APR in violation of 15 U.S.C. § 1638(a)(4) and Regulation Z § 1026.18(e). Regulation Z defines the term "finance charge" as "the cost of consumer credit." 12 CFR § 1026.4 (2004).

2.15 The PATCH Defendants did not comply at all with any of the TILA provisions regarding advance disclosure of the loan terms in advance of the loan signing. This also violated the Washington Consumer Loan Act which incorporated TILA requirements into its language.

2.16 The PATCH Defendants are covered by TILA loan disclosure requirements because they make more than five (5) loans per year. The PATCH Defendants were required to provide Ms. Cary with the Loan Estimate within three business days of the receipt of the consumer's loan application. 12 C.F.R. § 1026.19(e)(1). That Estimate must contain a good faith estimate of credit costs and transaction terms. If any information necessary for an accurate disclosure is unknown, the creditor must make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer and use due

diligence in obtaining the information. 12 C.F.R. § 1026.19(e)(1)(i); Comment 19(e)(1)(i)-1. The Estimate must be in writing and contain the information prescribed in § 1026.37. The creditor must disclose only the specific information set forth in 12 C.F.R. § 1026.37(a) through (n), as shown in the CFPB's form in appendix H-2, consistent with 12 C.F.R. § 1026.37(o).

2.17 Delivery must satisfy the timing and method of delivery requirements. The creditor is responsible for delivering the Loan Estimate or placing it in the mail no later than the third business day after receiving the application. 12 C.F.R. § 1026.19(e)(1)(iii)). The PATCH Defendants were required to use form H-24, promulgated by the CFPB. 12 C.F.R. § 1026.37(o)(3)(i). PATCH Defendants did not make any disclosures within three business days of Ms. Cary’s application or at all, nor did they use form H-24.

2.18 Rather than providing Beverly with standard loan terms which complied with federal and state lending laws, the PATCH Defendants demanded that she re-pay the loan with a percentage of her home's equity through a complex labyrinth of loan terms that no average consumer and even most experienced lawyers would be able to follow and understand, let alone calculate the interest rate, repayment requirements, etc. The Agreement also included an initial reduction in the alleged value of the Property and allowed Defendant PATCH to exclusively control the process of determining the value of the Property throughout the history of the transaction.

2.19 Further, the unlawful loan provided by the PATCH Defendants included a requirement, not disclosed in advance and only provided at the loan signing, of a **non-revocable** Power of Attorney (“POA”) giving the PATCH Defendants the power to control the entirety of the contractual relationship and stealing from Beverly any control she might have over her home, the Property. The very broad powers in the POA includes: (1) allowing

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1 Defendant PATCH to force the sale of Beverly's home in the event she files a bankruptcy and
 2 if Beverly fails to "maintain", "preserve" or "repair" the Property according to the unilateral
 3 discretion of Defendant PATCH. The definition of "maintain" and "repair" include such
 4 generic terms as keeping the Property in "good condition". Again, allowing Defendant PATCH
 5 to decide for itself and without giving Beverly any ability to challenge its decisions whether she
 6 is or is not keeping the Property in "good condition", which then permits Defendant PATCH to
 7 force the sale of her home and repeat its very significant profits that it disavows is interest.
 8

9 Beverly maintains that the amounts over and above what was loaned to her is interest that
 10 Defendants seek to mischaracterize in an effort at avoiding federal and state lending laws.
 11

2.20 Believing there were no other options and facing immense financial pressure,
 12 Beverly signed the PATCH Defendants' documents on or about **July 3, 2019**, approximately
 13 two months **before** Defendant PATCH had registered to conduct any business in the State of
 14 Washington. And as noted above, Defendant PATCH was not then and never has been licensed
 15 to engage in consumer lending and to take a lien interest on Beverly's residence in the State of
 16 Washington. That lien is evidenced by a Deed of Trust, which is consistent with Washington's
 17 requirements that any encumbrance be evidenced by a deed. RCW 64.04.010. The PATCH
 18 Defendants' Deed of Trust is most certainly an "encumbrance". Further, a deed of trust in
 19 Washington is treated as a mortgage on real property. RCW 61.24.020. This is irrespective of
 20 the PATCH Defendants efforts to characterize the transaction as anything other than a
 21 mortgage loan. *See also*, RCW 61.24.005(2) which defines "beneficiary" in a deed of trust as
 22 "the holder of the instrument or document evidencing the obligations secured by the deed of
 23 trust". Defendant PATCH has identified itself as the "beneficiary" in the Deed of Trust it
 24 required Beverly to sign.
 25
 26

27
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1 2.21 Beverly failed to understand core terms of the loan, which is understandable
 2 when one tries to read the complex and Byzantine terms included in the loan documents, such
 3 as Defendant PATCH's claim of a right to force the sale of her home prior to the end of the 10
 4 year term of the loan; exactly how the repayment amount will be calculated; how much Beverly
 5 would owe six (6) months after the documents were signed; how much would be owed after
 6 twelve (12) months; how much would be owed after three (3) years, and so on. In return for
 7 the approximately \$62,000 that Defendant PATCH paid out on the loan to Beverly and on her
 8 behalf for her debts, Beverly had no idea that it would demand in excess of \$126,000.00 less
 9 than three years later, as it has done in her bankruptcy case.

10 2.22 Among the other absurd terms of the unlawful loan made by the PATCH
 11 Defendants are the following, including terms of the Real Estate Option Agreement, Sections
 12 5.3, 6.1, 6.2, 7 and 19, including subsections and in particular, Section 20, which requires
 13 Beverly to indemnify Defendant PATCH for any potential claims while there is no obligation
 14 from Defendant PATCH to Beverly:

- 15 a. It allows the "Investor", Defendant PATCH, to order an appraisal
 16 without Beverly's consent and to charge her for it;
- 17 b. If Beverly disagrees with the appraised amount, she has to pay for
 18 another one herself and if she and Defendant PATCH cannot reach an agreement, she is
 19 required to arbitrate the issue. As noted above, mandatory arbitration in connection with the
 20 making of a residential mortgage loan which is Beverly's principal dwelling is illegal under
 21 federal law;
- 22 c. The Owner, Beverly, will have a different required "payout" amount
 23 depending upon what sort of transaction she enters into in the future to either refinance the
 24 Property, sell it to a third party, sell it to Defendant PATCH, etc. These are the sort of uncertain
 25 and differing repayment terms which violate federal and state lending laws;
- 26 d. Specific assertions of what Beverly has to repay Defendant PATCH
 27 while simultaneously contending that the transaction is not a loan and that interest is not being
 charged.

28 2.23 In spite of the PATCH Defendants' repeated assertions throughout the loan

1 documents that the transaction is not a loan, the accompanying Deed of Trust confirms that that
2 is precisely the nature of the transaction in multiple places . Paragraph 7 begins with the
3 following language:

4 Default and Foreclosure and Power of Sale.

5 Upon default by Trustor in the performance of or upon breach by Trustor of any
6 of the rights and obligations that are secured by this Security Instrument as
7 specified above, **Beneficiary may declare all sums secured by this Security
Instrument immediately due and payable and may invoke the power of sale
and any other remedies permitted by applicable law, including an action in
any court of competent jurisdiction to foreclose this Security Instrument as a
deed of trust or mortgage.**

8
9 Deed of Trust, Paragraph 7 (emphasis added). The Trustor is Ms. Cary and the Beneficiary is
10 Defendant PATCH.

11
12 2.24 The Deed of Trust at Paragraph 10 also gives the Trustee powers that only the
13 Beneficiary may demand it exercise, in contravention of its duties under Washington law to
14 both the “borrower” (in this instance, the borrower is identified as the “Trustor”) and the
15 “beneficiary”. RCW 61.24.010(4).

16
17 2.25 At Paragraph 12, the exclusive duty to pay for the services of the Trustee, which
18 only Defendant PATCH controls and directs, is to be borne by Trustor, Ms. Cary. This too is a
19 blatant violation of Washington law and further evidences just how much the entirety of the
20 subject loan transaction is one-sided and designed to guarantee that Ms. Cary ends up losing
21 her home and all of the equity in it to Defendant PATCH.

22
23 2.26 The Deed of Trust also purports to be a separate lien on personal property that is
24 part of the Property, including fixtures, under UCC Article 9. This assertion is absurd and
25 contradictory to the provisions of Washington law that makes clear that a deed of trust secures
26 real property and only real property. Further, “fixtures” are not separate from structures on and

1 part of real property.

2 2.27 Ms. Cary is not listing all of the onerous and unlawful terms of the loan
 3 agreement herein, but she does assert that every part of the loan documentation violates federal
 4 and state lending laws, as well as Washington real property law. She also did not realize she
 5 had agreed to a mandatory arbitration clause until the loan documents were reviewed with her
 6 attorneys. Had she not taken action to reject the loan terms and rescind the loan entirely under
 7 TILA with the assistance of her attorneys, she would have been bound by all of the loan terms,
 8 including the unlawful mandatory arbitration clause.

9
 10 2.28 The PATCH Defendants may have further violated TILA and state law when it
 11 made the unilateral decision to have Ms. Cary's escrow handled by an escrow agent, Defendant
 12 Lenders Advantage, which may not be licensed in Washington state in a manner that allowed it to
 13 act as an escrow agent in Washington state. The escrow paperwork indicated that Defendant
 14 Lenders Advantage was operating under a California license – not a Washington license. If
 15 Defendant Lender's Advantage is actually just a part of First American Title Insurance and is
 16 licensed by the Washington Department of Insurance, then it can act as an escrow agent in
 17 Washington as long as it complies with the Escrow Agent Registration Act, RCW 18.44, *et seq.*
 18

19 2.29 Defendant Lenders Advantage also included a mandatory arbitration agreement
 20 in its escrow paperwork which is prohibited by TILA. That agreement purports to require
 21 arbitration of any and all disputes relating to the loan terms. By doing so, Defendant Lenders
 22 Advantage was acting in collusion with the PATCH Defendants to further violate TILA which
 23 prohibits the use of a mandatory arbitration agreement in connection with a federally regulated
 24 mortgage loan. 15 U.S.C. § 1639c(e)(3). The PATCH Defendants cannot use a third party to
 25 impose terms upon a borrower that are prohibited by federal law.
 26

1 2.30 As evidenced by the fact that Beverly had to file a Chapter 13 bankruptcy,
 2 obtaining a loan from Defendant PATCH did not solve Beverly's financial problems. She
 3 found herself back in financial trouble again due to Alycia's continued addiction problems. She
 4 was required to file this bankruptcy to get some relief, but that was how she discovered the
 5 horrific nature of the loan she obtained from Defendant PATCH when she had to try to figure
 6 out how much she owed on the loan after a short period of time.
 7

8 2.31 Upon request by Beverly's bankruptcy counsel, Defendant PATCH provided a
 9 "Final Payoff Statement" in the amount of \$126,554.00 dated March 5, 2021. Defendant
 10 PATCH later filed a Proof of Claim in the amount of \$122,500.00 on July 5, 2021. Apparently,
 11 Defendant PATCH cannot even calculate its own payoff calculations using the formula it
 12 created. But these amounts make it very clear that the transaction is a loan and a very expensive
 13 one at that. Defendant PATCH lent Ms. Cary \$64,000.00 on or about July 13, 2019 and less
 14 than two years later, it was demanding almost double that amount in repayment. That
 15 constitutes an interest rate of almost 50% per annum.
 16

17 2.32 Defendant PATCH has even gone so far as to try to repeatedly oppose Beverly's
 18 attempts to get lawyers hired to represent her in challenging the validity of this loan agreement,
 19 telling this Court that Beverly doesn't have a right to challenge its unlicensed loan product and
 20 making threats about incurring legal fees in connection with its efforts to prevent her from
 21 obtaining recovery that Defendant PATCH maintains it can charge her under the loan contract.
 22 In other words, Defendant PATCH is using its high-priced Silicon Valley lawyers to waste this
 23 Court's time by making frivolous arguments and legally unsupported opposition to Ms. Cary's
 24 right to challenge the terms of this unlawful loan while preparing to charge her for those
 25 efforts. This is yet another example of the horrific and onerous nature of the contractual terms
 26
 27

1 of the unlawful loan provided to Beverly by Defendant PATCH, and the predatory nature of
2 Defendant PATCH and all of its affiliated entities, as well as the members of the Defendants'
3 LLCs.

4 2.33 Defendant Lenders Advantage has acted in collusion with the other Defendants
5 to facilitate this unlawful loan by providing escrow services in Washington state when it may
6 not be licensed to do so, and by insisting that Ms. Cary sign an escrow agreement that includes
7 a mandatory arbitration agreement, in direct contravention of the federal lending laws.
8

9 2.34 Beverly has incurred damages and been injured in amounts to be determined
10 later by the trier of fact but which include at this stage illegal and unlawful demands for interest
11 and fees which Defendant PATCH is demanding in violation of Washington law. As outlined
12 below, a loan made by an unlicensed lender which is secured by a residence does not allow the
13 lender to recovery **any fees or interest** on the loan. RCW 31.04.035(2). She has also incurred
14 attorneys' fees and costs relating to having to obtain information from the PATCH Defendants
15 about the alleged loan balance, and to respond to the Proof of Claim and other efforts in her
16 Chapter 13 bankruptcy attributable to the actions of the PATCH Defendants. Further, Ms. Cary
17 is required to take this action to make certain that the unlawful arbitration clause is not included
18 in the loan agreement with the PATCH Defendants and to make certain that the PATCH
19 Defendants cannot enforce the unlawful terms which it has tried to impose upon Ms. Cary, in
20 contravention of federal and state lending laws.
21
22

23 III. CAUSES OF ACTION

24 First Cause of Action
25 Quiet Title and To Determine
26 The Nature and Extent of Any Lien
27 as Against Defendants PATCH and Patch Homes

3.1 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in the paragraphs above, inclusive, of the Factual Allegations above.

3.2 Under Washington law, RCW 7.28.010, Ms. Cary has the right to bring this action in order to remove the cloud on title in the form of an unlawful mortgage loan secured by a Deed of Trust that has been generated, created and recorded against the subject real Property by Defendants PATCH and Patch Homes, in an attempt to gain for in a monetary recovery against the Property to which it is not entitled, as it is above and beyond any right it may have for making an unlawful loan.

Second Cause of Action

Violation of the Consumer Loan Act, which is a Per Se Violation of the Consumer Protection Act as Against Defendants PATCH and Patch Homes

3.3 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in all of the Sections above, inclusive, and the Facts Statements, inclusive, and Paragraphs 3.1 through 3.2 of the Causes of Action above.

3.4 The Consumer Loan Act, RCW 31.04.035, **requires** any person or entity to be licensed under the CLA if they obtain a lien on a borrower's residence. Defendants PATCH and Patch Homes do not have a license to make a consumer loan and the loan transaction at issue is a consumer loan secured by Ms. Cary's residence. A violation of RCW 31.04.035 is a *per se* violation of the Consumer Protection Act and as such, Defendants PATCH and Patch Homes are liable to Ms. Cary for their violations of the law, as more particularly described above in Facts Section.

3.5 A *per se* violation of the CPA under the CLA, RCW 31.04.208, meets the

requirements of (1) unfair or deceptive act, (2) in trade or commerce, and (3) affecting the public interest. *Id.* As identified above, Ms. Cary has suffered injuries and incurred damages as a direct result of the actions of Defendants PATCH and Patch Homes in connection with their violations of the CLA. Therefore, she is entitled to recover damages, treble damages and reasonable attorney fees and costs pursuant to the statute, as well as permanent injunctive relief to make certain that other Washington consumers are not similarly harmed by the actions of Defendants PATCH and Patch Homes. In addition, Defendants PATCH and Patch Homes may not collect **any** interest on the loan nor any fees, and if any of these amounts have already been paid by Ms. Cary, either through the loan terms or other means, Defendants PATCH and Patch Homes must refund those amounts to her under Washington law.

Third Cause of Action
Violation of the Washington State Usury Statute
Which is a *Per Se* Violation of the CPA
as Against Defendants PATCH and Patch Homes

3.6 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in all of the Sections above, including the Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.5 of the Causes of Action above.

3.7 Under RCW 19.52.020(1),

(1) Except as provided in subsection (4) of this section, any rate of interest shall be legal so long as the rate of interest does not exceed the higher of: (a) Twelve percent per annum; or (b) four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement of the parties to the contract, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate. No person shall directly or indirectly take or receive in money, goods, or things in

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1 action, or in any other way, any greater interest for the loan or forbearance of any
2 money, goods, or things in action.

3 RCW 19.52.020(1).

4 3.8 Given the current interest rate published by the Board of Governors of the
5 Federal Reserve System is extremely low, the effective cap on interest rates in Washington
6 state is twelve percent (12%) per annum. The loan made to Beverly by Defendants PATCH and
7 Patch Homes carries an interest rate demonstrably in excess of 12 percent per annum based
8 upon the amounts demanded by the PATCH Defendants in her Chapter 13 bankruptcy.

9 3.9 RCW 19.52.030 also provides that:

10 (1) If a greater rate of interest than is allowed by statute shall be contracted for or
11 received or reserved, the contract shall be usurious, but shall not, therefore, be
12 void. If in any action on such contract proof be made that greater rate of interest
13 has been directly or indirectly contracted for or taken or reserved, the creditor
14 shall only be entitled to the principal, less the amount of interest accruing thereon
15 at the rate contracted for; and if interest shall have been paid, the creditor shall
16 only be entitled to the principal less twice the amount of the interest paid, and less
17 the amount of all accrued and unpaid interest; and the debtor shall be entitled to
18 costs and reasonable attorneys' fees plus the amount by which the amount the
19 debtor has paid under the contract exceeds the amount to which the creditor is
20 entitled . . .

21 RCW 19.52.030(1).

22 3.10 Consistent with the Usury statute, Ms. Cary is entitled to recover **twice** the
23 interest that she has already paid on the loan, which in this case may be that amount which the
24 PATCH Defendants are demanding in the bankruptcy has already "accrued" and should be
25 deducted from the equity in her home. The PATCH Defendants is only entitled to recover the
26 principal amount provided to Ms. Cary, less any interest which has been accrued and to recover
27 her reasonable attorneys' fees and costs incurred to date. This will also include the costs she
was charged in connection with the making of the loan, including the escrow and other fees.

3.11 The Usury statute also allows for a *per se* CPA violation in the event of a violation of the statute. RCW 19.52.036. A violation of the statute meets the unfair or deceptive and trade or commerce elements of the CPA.

3.12 Ms. Cary can prove the “public interest” element of a CPA claim which requires proof that the PATCH Defendants “had the capacity to injure other persons” and “has the capacity to injure other persons” because it continues in its business as of the writing of this Amended Complaint. This is also evidenced by the actions of the PATCH Defendants in Ms. Cary’s bankruptcy wherein they tried to collect a usurious interest amount by filing a Proof of Claim for the same and because of its actions to try to prevent Ms. Cary from being able to hire lawyers to represent her.

3.13 Ms. Cary, acting through her attorneys, is also aware that the PATCH Defendants continue to do business by advertising online through the Noah website offering the same products that she was conned into signing.

3.14 Ms. Cary has suffered injuries and incurred damages as a direct result of the actions of Defendants PATCH and Patch Homes in connection with their violations of the Washington usury statute. Therefore, she is entitled to recover damages, treble damages and reasonable attorney fees and costs pursuant to the statute, as well as permanent injunctive relief to make certain that other Washington consumers are not similarly harmed by their actions. In addition, the PATCH Defendants may not collect **any** interest on the loan nor any fees, and if any of these amounts have already been paid by Ms. Cary, either through the loan terms or other means, the PATCH Defendants must refund double those amounts to her under Washington law.

Fourth Cause of Action

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Violation of the Consumer Protection Act as Against Defendants PATCH and Patch Homes

3.15 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in all of the Sections above, including the Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.14 of the Causes of Action above.

3.16 The PATCH Defendants have made numerous misrepresentations about the terms of the contract and whether or not it is a loan, whether the terms of the loan are compliant with Washington state law (they are not) and whether the loan can even be made under Washington law, as well as the amounts owing under the loan and whether PATCH Defendants can charge her interest and any fees on the loan, as more particularly described above. These misrepresentations were unfair and deceptive, and they occurred in trade or commerce, which is PATCH Defendants' business model and purpose.

3.17 Ms. Cary maintains, based upon information and belief, that the Defendants have engaged in making similar misrepresentations to other Washington homeowners and/or that it had the capacity to do so previously and/or has the capacity to do so in the future.

3.18 All of Ms. Cary's injuries and damages were caused by the PATCH Defendants and they are directly responsible for those injuries and damages.

Fifth Cause of Action Intentional and Negligent Misrepresentation as Against PATCH Defendants

3.19 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in all of the Sections above, including the Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.18 of

1 the Causes of Action above.

2 3.20 Ms. Cary maintains that there were numerous intentional and/or negligent
3 misrepresentations made to her by the PATCH Defendants about the terms of the loan, by and
4 through their agents, as described more particularly hereinabove.

5 3.21 Ms. Cary was particularly harmed by the specific misrepresentations made by
6 the representatives of PATCH Defendants about the terms of the loan, and intentional
7 omissions about the loan terms prior to signing since they did not provide her with any
8 information about the loan terms in advance, as described more particularly in the Facts section
9 above. Included in the misrepresentations were assertions regarding the fact that it is a loan, in
10 spite of PATCH Defendants' assertions to the contrary, the correct amount owing at any given
11 time after the loan is made, the amounts that may be demanded in connection with the loan
12 under Washington law, and the rights to completely control all of the terms of the contract and
13 whether or not Beverly is complying with the loan terms.

14 3.22 As a result of the actions of the PATCH Defendants, which is also referenced in
15 the loan documents, Beverly has been harassed for monies that she does not owe and now faces
16 the risk of losing her home and all of her equity therein.

17 Sixth Cause of Action
18 Violations of the Escrow Registration Agent Act, RCW 18.44, et seq.
19 Which Constitutes A Violation of the CPA as Against
20 Defendant First American Title Insurance Company Lenders Advantage

21 3.23 Ms. Cary incorporates herein by reference as though fully set forth at length
22 each and every allegation and statement contained in all of the Sections above, including the
23 Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.22 of
24 the Causes of Action above.

1 3.24 RCW 18.44.011(8) defines who may act as an escrow agent under Washington
2 law:

3 "Escrow agent" means any person engaged in the business of performing for
4 compensation the duties of the third person referred to in subsection (7) of this
5 section.

6 RCW 18.44.011(8).

7 3.25 RCW 18.44.011(7) describes the business practices which constitute an
8 "escrow" which is undertaken by an "escrow agent":

9 "Escrow" means **any transaction**, except the acts of a qualified intermediary in
10 facilitating an exchange under section 1031 of the internal revenue code, **wherein**
11 **any person or persons, for the purpose of effecting and closing the sale,**
12 **purchase, exchange, transfer, encumbrance, or lease of real or personal**
13 **property to another person or persons, delivers any written instrument,**
14 **money, evidence of title to real or personal property, or other thing of value**
15 **to a third person to be held by such third person until the happening of a**
16 **specified event or the performance of a prescribed condition or conditions,**
17 **when it is then to be delivered by such third person, in compliance with**
18 **instructions under which he or she is to act, to a grantee, grantor, promisee,**
19 **promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or**
20 **employee thereof.** "Escrow" includes the collection and processing of payments
21 and the performance of related services by a third party on seller-financed loans
22 secured by a lien on real or personal property but excludes vessel transfers.

23 RCW 18.44.011(7). Emphasis added.

24 3.26 Defendant Lenders Advantage is an "escrow agent" as defined by RCW
25 18.44.011(8) and it performed the acts described in RCW 18.44.011(7) in connection with
26 providing escrow services to Ms. Cary and the PATCH Defendants relating to the loan that is
27 the subject of this litigation.

28 3.27 The Escrow Agent Registration Act, RCW 18.44.301 includes the following
29 "Prohibited Practices":

30 It is a violation of this chapter for any **escrow agent**, controlling person,
31 officer, designated escrow officer, independent contractor, employee of an escrow
32 business, or other person subject to this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or **mislead borrowers or lenders** or to defraud any person;

(2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the conduct of the business of escrow, or relative to the business of escrow or relative to any person engaged therein;

(11) Fail to comply with any requirement of any applicable federal or state act including the truth in lending act, 15 U.S.C. Sec. 1601 et seq. and Regulation Z, 12 C.F.R. Sec. 226; the real estate settlement procedures act, 12 U.S.C. Sec. 2601 et seq. and Regulation X, 24 C.F.R. Sec. 3500; the equal credit opportunity act, 15 U.S.C. Sec. 1691 et seq. and Regulation B, Sec. 202.9, 202.11, and 202.12; Title V, Subtitle A of the financial modernization act of 1999 (known as the Gramm-Leach-Bliley act), 12 U.S.C. Secs. 6801-6809; the federal trade commission's privacy rules, 16 C.F.R. Secs. 313-314, mandated by the Gramm-Leach-Bliley act; as these acts existed on January 1, 2007, or such subsequent date as may be provided by the department by rule, or any other applicable escrow activities covered by the acts;

10

RCW 18.44.301(1), (2), (4), (11). Emphasis added.

3.28 Ms. Cary maintains that Defendant Lenders Advantage in actions more

particularly described above which constituted violations of the Prohibited Practices, RCW

18.44.301(1), (2), (4) and (11) by engaging in a “scheme, device, or artifice to defraud or

mislead borrowers or lenders or to defraud any person" (1); by "directly or indirectly e-

any unfair or deceptive practice toward any person" (2); knowingly make, publish, or

disseminate any false, deceptive, or misleading information in the conduct of the business of

escrow, or relative to the business of escrow or relative to any person engaged therein (4); and

fail to comply with any requirement of any applicable federal or state act including the Truth in Lending Act.

¹¹ Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 226 (11) when it

consummated an obviously unlawful loan that included paperwork which expressly disavowed

being a loan and which obviously violated TIL A in numerous ways, including the fact that

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1 none of the documents required by TILA were included in the loan documents.

2 3.29 Defendant Lenders Advantage violated the Washington Consumer Protection
3 Act"("CPA"), RCW 19.86, *et seq.*, in connection with its actions during its handling of the
4 escrow for Defendant PATCH and Ms. Cary. Those actions are identified as follows:

5 a. It engaged in "unfair or deceptive acts or practices in the conduct of any trade or
6 commerce." RCW 19.86.020. Those "unfair" and "deceptive" acts included the inclusion of the
7 Arbitration Agreement in the Escrow General Instructions, which required that Ms. Cary
8 pursue **"all disputes and claims arising out of or relating to this Escrow must be resolved
9 by arbitration."**

10 **19. AGREEMENT TO ARBITRATE.**

11 (a) Except as indicated in the paragraph regarding CONFLICTING
12 INSTRUCTIONS & RELATED DISPUTES, above, **all disputes and claims
13 arising out of or relating to this Escrow must be resolved by arbitration.**

14 Notwithstanding the foregoing, any party may bring an individual action in small
15 claims court. Any dispute as to the arbitrability of claims or the scope or
16 enforceability of this arbitration provision, or as to the interpretation of paragraph
17 (c) below, is for the court to decide. This Escrow evidences a transaction in
 interstate commerce, and thus the Federal Arbitration Act governs the
 interpretation and enforcement of this provision. This arbitration provision shall
 survive termination of the Escrow.

18 Escrow General Instructions, Paragraph 19. (Emphasis added.) Given the broad language of the
19 **AGREEMENT TO ARBITRATE** that Defendant Lender's Advantage required Ms. Cary to
20 sign, it applies to any of her challenges to the entirety of the transaction with the PATCH
21 Defendants, as well as the escrow agent.

22 b. The Truth in Lending Act (TILA) prohibits the use of an arbitration clause in
23 connection with mortgage lending secured by the borrower's primary dwelling. 15 U.S.C. §
24 1639c(e)(3). Thus, Defendant Lender's Advantage was actively engaged with the PATCH
25 Defendants in assisting them in violating those provisions of TILA and imposing an arbitration
26 clause in the Escrow General Instructions.

1 clause upon Ms. Cary that is prohibited by federal law in this sort of lending transaction. These
2 actions constituted an unfair and deceptive act.

3 c. Defendant Lender's Advantage also participated in an escrow for a transaction
4 that purported **not** to be a loan, but which it treated as a loan for purposes of the escrow,
5 including the execution of a Deed of Trust which is defined in Black's Law Dictionary as:
6

7 An instrument in use in many states, taking the place and serving the uses of a
8 common-law mortgage, by which the legal title to real property is placed in one or
9 more trustees, **to secure the repayment of a sum of money or the performance
of other conditions.**

10 Black's Law Dictionary. (Emphasis added.) This also constituted an "unfair" and "deceptive"
11 act, as well as publication and/or dissemination of "false" and "misleading" information to Ms.
12 Cary.

13 d. Defendant Lender's Advantage engaged in that action in connection with its
14 business of providing escrow services, which constitutes "trade or commerce". Paragraph
15 19(a), "This Escrow evidences a transaction in interstate commerce . . ."

16 d. Defendant Lender's Advantage's actions **had** and **has** "the capacity to injure
17 other persons." RCW 19.86.093(c). This is demonstrated by way of the fact that the document
18 signed by Ms. Cary is titled "Escrow General Instructions". It is Defendant Lender's
19 Advantage's "General Instructions" utilized by at least a significant portion of their escrow
20 customers. Discovery in this case will confirm how often it has been used on others to impose
21 upon them an arbitration clause that violates TILA.

22 e. The actions of Defendant Lender's Advantage caused Ms. Cary damages in the
23 form of participating in and helping facilitate the inducement to get her to enter into a loan
24 transaction that was nothing like what it purported to be and without any of the required loan
25
26

1 disclosures mandated under federal and state law. If the PATCH loan is held to be enforceable,
2 it would result in Ms. Cary likely losing most, if not all, of the equity in her home, and would
3 allow a third party to have complete control of all decisions to be made regarding her home for
4 the entirety of the loan contract.

5 f. Defendant Lender's Advantage has also caused Ms. Cary injury in the form of
6 having to pay her bankruptcy lawyer to deal with PATCH's demands for payment of
7 approximately double the amount it loaned to Ms. Cary after only two years through the filing
8 of a Proof of Claim. She was also injured by the PATCH Defendants making that demand,
9 even though she has not yet been required to pay any of it.

10 g. Defendant Lender's Advantage helped cause the damages and injuries suffered
11 by Ms. Cary through its intentional actions which were always designed to assist only the
12 PATCH Defendants and were done either with the intent to harm Ms. Cary or with a callous
13 and intentional disregard of the harm that would come to an unsophisticated borrower entering
14 into an exceedingly complex loan transaction that purported to not even be a loan.

15 3.30 For all of the above reasons and based upon its actions, Ms. Cary maintains that
16 Defendant Lender's Advantage is liable to her for violations of the Consumer Protection Act,
17 RCW 19.86, *et seq.*

18
19
20 Seventh Cause of Action
21 Violations of the Truth in Lending Act, 15 U.S.C. § 1206, *et seq.*
22 Against PATCH Defendants

23 3.31 Ms. Cary incorporates herein by reference as though fully set forth at length
24 each and every allegation and statement contained in all of the Sections above, including the
25 Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.30 of
26 the Causes of Action above.

1 3.32 The PATCH Defendants are required by TILA to make numerous loan
2 disclosure because they make more than five (5) loans per year and because the loan met the
3 definition of a “federally related mortgage loan”, which included:

4 (1) Any loan (other than temporary financing, such as a construction loan):
5 (i) That is secured by a first or subordinate lien on residential real
6 property, including a refinancing of any secured loan on residential real property,
7 upon which there is either:
8 (A) Located or, following settlement, will be constructed using
9 proceeds of the loan, a structure or structures designed principally for occupancy
10 of from one to four families (including individual units of condominiums and
11 cooperatives and including any related interests, such as a share in the cooperative
12 or right to occupancy of the unit);
13

14 3.33 For that reason, the PATCH Defendants were required to provide Ms. Cary with
15 a Loan Estimate within three business days of the receipt of the consumer’s loan application.
16 12 C.F.R. § 1026.19(e)(1). It was required to contain a good faith estimate of credit costs and
17 transaction terms, based upon the best information reasonably available at the time the
18 disclosure is provided to the consumer and use due diligence in obtaining the information. 12
19 C.F.R. § 1026.19(e)(1)(i); Comment 19(e)(1)(i)-1. The Estimate was required to be in writing
20 and contain the information prescribed in 12 C.F.R. § 1026.37. The creditor must disclose only
21 the specific information set forth in 12 C.F.R. § 1026.37(a) through (n), as shown in the
22 CFPB’s form in appendix H-2, consistent with 12 C.F.R. § 1026.37(o).

23 3.34 The creditor is responsible under TILA for delivering the Loan Estimate or
24 placing it in the mail no later than the third business day after receiving the application. 12
25 C.F.R. § 1026.19(e)(1)(iii)). The PATCH Defendants were required to use form H-24,
26 promulgated by the CFPB. 12 C.F.R. § 1026.37(o)(3)(i). PATCH Defendants did not make any
27 disclosures within three business days of Ms. Cary’s application or at all, nor did they use form

H-24.

3.35 Rather than providing Beverly with standard loan terms which complied with federal and state lending laws, The PATCH Defendants demanded that she re-pay the loan with a percentage of her home's equity through a complex labyrinth of loan terms that no average consumer and even most experienced lawyers would be able to follow and understand, let alone calculate the interest rate, repayment requirements, etc. The Agreement also included an initial reduction in the alleged value of the Property and allowed Defendant PATCH to exclusively control the process of determining the value of the Property throughout the history of the transaction.

3.36 Based upon these violations of TILA, Ms. Cary is entitled to rescind the loan and she seeks that recovery from the Court. 12 C.F.R. § 1026.23(a)(3). Simultaneous with the filing of this Third Amended Complaint, Ms. Cary will also send a Rescission Letter as contemplated by the statute.

Eighth Cause of Action
Violations of the Truth in Lending Act, 15 U.S.C. § 1639c(e)(3)
Against PATCH Defendants

3.37 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in all of the Sections above, including the Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.36 of the Causes of Action above.

3.38 TILA, at 15 U.S.C. § 1639c(e)(3), prohibits the imposition of an arbitration clause on any mortgage loan which is secured by the borrower's primary dwelling:

(e) Arbitration

(1) In general

No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

• • • •

(3) No waiver of statutory cause of action

No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 1640 of this title or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this subchapter, or any other Federal law.

15 U.S.C. § 1639c(e)(3).

3.39 The PATCH Defendants acted in collusion with Defendant Lenders Advantage and chose to use that entity as the escrow agent in this transaction and allowed it to include a mandatory arbitration clause in the closing documents which sought to impose such terms on the entirety of the loan transaction, in direct contravention of federal law.

3.40 The PATCH Defendants are charged with knowing the federal and state lending laws which applied to this transaction and their intentional actions in violating all of those lending laws is evidenced in the entirety of the transaction, including the repeated assertions in the loan documents themselves that the transaction was not a loan.

3.41 The PATCH Defendants therefore violated federal law by including a mandatory arbitration agreement in the subject loan terms.

11

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Ninth Cause of Action
Violations of the CPA Based Upon Unlawful Imposition
Of a Mandatory Arbitration Clause on Plaintiff
In Violation of Federal Law As Against
Defendant First American Title Insurance Company Lenders Advantage
And The Patch Defendants

3.42 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in all of the Sections above, including the Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.41 of the Causes of Action above.

3.43 As noted above, Defendant Lenders Advantage, acting in collusion with the PATCH Defendants, included an arbitration clause in the escrow documents which is designed to bind Ms. Cary to mandatory arbitration in connection with the making of the subject loan, in direct violation of the requirements of federal law. The Truth in Lending Act, 15 U.S.C. § 1639c(e) prohibits the use of a binding arbitration clause in connection with the making of a residential mortgage loan when it is the borrower's principal dwelling.

3.44 Defendant Lenders Advantage is licensed as an escrow agent in the State of California, as noted on its escrow documents and it may well be licensed to act as an escrow agent in Washington if it is really the First American Title Company which is licensed in Washington by the Office of Insurance Commissioner. As such, it was required to adhere to TILA and other federal lending laws under Washington law in connection with its work as an “escrow agent” in Washington state. RCW 18.44.301(11). It is therefore charged with knowing the corresponding federal and state lending laws which regulate the making of federally regulated mortgage loans as well as knowledge of Washington escrow laws. It either has intentionally ignored TILA and federal lending laws or it has chosen not to know them and to

act in collusion with lenders such as the PATCH Defendants to violate those laws. Either way, it acted in violation of the requirements of TILA and the Washington Escrow Agent Registration Act.

3.45 The PATCH Defendants also are charged with knowing federal and state lending laws, which include TILA and the express prohibition on the imposition of a mandatory arbitration clause. It chose to intentionally ignore this prohibition, craft loan documents that disavow being a loan and colluding with Defendant Lenders Advantage to impose upon Ms. Cary an unlawful mandatory arbitration clause.

3.46 The PATCH Defendants have made numerous misrepresentations about the terms of the contract and whether or not it is a loan, as described more completely above. In addition, it further engaged in unfair and deceptive actions by choosing an escrow agent which imposed upon Ms. Cary in the escrow documents a mandatory arbitration agreement which was prohibited by federal law.

3.47 The PATCH Defendants and Defendant Lenders Advantage engaged in these unfair and deceptive actions in connection with trade or commerce, the operation of their respective businesses, and they had previously when they took these actions the capacity to impose an unlawful arbitration agreement upon borrowers in the future and they continue to have the capacity to impose an unlawful arbitration agreement upon other borrowers at this time. RCW 19.86.020; 19.86.093(c).

3.48 Ms. Cary was injured by way of the imposition of this unlawful arbitration agreement because she had to retain and consult with attorneys to make certain that she did not become required to participate in this unlawful arbitration agreement and to arbitrate her claims against the Defendants.

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3.49 All of Ms. Cary's injuries and damages were caused by the PATCH Defendants and Defendant Lenders Advantage and they are directly responsible for those injuries and damages.

Tenth Cause of Action
Objection to Claim
Against PATCH Defendants

3.50 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in all of the Sections above, including the Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.49 of the Causes of Action above.

3.51 Incorporating the prior factual allegations and nine causes of action pled in this Complaint, Defendant PATCH’s Proof of Claim as identified in claim number 11, **Exhibit A**, should be disallowed as a secured claim. Any fees, accrued interest (disguised as an equity interest or otherwise), should be also disallowed. Should the court disallow this claim in its entirety.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ms. Cary prays for the following relief:

1. Judgment against all of the Defendants in an amount to be proven at trial for recovery of her out of pocket damages, as well as the value of the injuries she has suffered;

2. Treble damages up to \$25,000.00 for each of Ms. Cary's categories of damage and injury as provided under the CPA;

3. Any statutory damages available under federal or state lending laws, including recovery of costs Ms. Cary has already paid through the escrow process;

4. An award of attorneys' fees and costs in an amount to be proven at trial;

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- 1 5. Disallow Claim 11 in its entirety.
- 2 6. Quiet Title in favor of Debtor, against the PATCH Defendants;
- 3 7. Rescind the loan made by the PATCH Defendants;
- 4 8. For injunctive relief against all of the Defendants to prevent any other

5 Washington consumers from being harmed by the unlawful, unlicensed business activities of
6 all of the Defendants; and

- 7 9. For such other and further relief as the Court deems just and proper.

8 DATED this ____ day of June, 2022.

9
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11 HUELSMAN, P.S.

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13 Melissa A. Huelsman, WSBA #30935
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EXHIBIT B

KINGTHOMAS W DORE The Honorable LAUREN
Chapter 13
Seattle, WA

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

BEVERLY JANE CARY,
Debtor.

BEVERLY JANE CARY,
Plaintiff,
v.
PATCH SERVICES, LLC d/b/a
NOAH; PATCH HOMES, INC.;
FIRST AMERICAN TITLE
INSURANCE COMPANY
LENDERS ADVANTAGE,
Defendants.

Dist Ct. Case 2:22-cv-00538-LK

Chapter 13 Case No. 20-12450 TWD

Adversary Case No. 22-01000-TWD

SECOND [PROPOSED]
THIRD AMENDED COMPLAINT

- (1) TO DETERMINE NATURE AND EXTENT OF LIEN, IF ANY AND TO QUIET TITLE;
- (2) VIOLATION OF RCW 31.04, *et seq.*, WA CONSUMER LOAN ACT, WHICH CONSTITUTES A *PER SE* VIOLATION OF THE WA CONSUMER PROTECTION ACT, RCW 19.886, *et seq.*;
- (3) WA USURY STATUTE, RCW 19.52, *et seq.*, WHICH CONSTITUTES A *PER SE* VIOLATION OF THE WA CONSUMER PROTECTION ACT, RCW 19.86, *et seq.*.
- (4) WA CONSUMER PROTECTION ACT, RCW 19.86, *et seq.*;
- (5) INTENTIONAL AND NEGLIGENT MISREPRESENTATION;
- (6) WA CONSUMER PROTECTION ACT, RCW 19.86, *et seq.*, VIOLATION BASED UPON VIOLATIONS OF THE WA ESCROW AGENT

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~~SECOND~~ THIRD AMENDED COMPLAINT - 1

REGISTRATION ACT, RCW 18.44, *et seq.*; WHICH CONSTITUTES A *PER SE* VIOLATION OF THE WA CONSUMER PROTECTION ACT, RCW 19.86, *et seq.*; AND OTHER ACTIONS; (7) VIOLATIONS OF THE TRUTH IN LENDING ACT, 15 U.S.C. § 1601, *et seq.*; (8) VIOLATIONS OF THE TRUTH IN LENDING ACTION, 15 U.S.C. § 1639c(e)(3); (9) WA CONSUMER PROTECTION ACT, RCW 19.86, *et seq.* RE: UNLAWFUL ARBITRATION CLAUSE; (10) OBJECTION TO CLAIM 11

COMES NOW Debtor and Plaintiff Beverly Jane Cary to pursue her claims that Defendants' joint and several acts constituteconstituted violations of numerous Washington statutes, including the Consumer Loan Act, RCW 31.04, *et seq.* and the Escrow Agent Act, RCW 18.44, *et seq.* (“CLA”), which constituteconstitutes a *per se* violation of the Washington Consumer Protection Act (“CPA”), RCW 19.86, *et seq.*; stand-alone violations of the Consumer Protection Act, RCW 19.86, *et seq.*; including a violation which is related to violations of the Escrow Registration Agent Act, RCW 18.44, *et seq.* and other actions; violations of the Usury statute, RCW 19.52, *et seq.*; Intentional and Negligent Misrepresentation; to Quiet Title as against the PATCH Defendants' unlawful lien; violations of the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, including 15 U.S.C. § 1639c(e)(3) and form the basis for her objectionObjection to claim 11Claim and avoidance of the PATCH Defendants' Deed of Trust.

I. PARTIES, JURISDICTION AND VENUE

1.1 Defendant PATCH HOMES, INC d/b/a NOAH, referred to herein as

SECOND THIRD AMENDED COMPLAINT - 2

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1 ("PATCH") was formed under the laws of the state of Delaware. Defendant PATCH was not
 2 registered with the Washington Secretary of State as a foreign corporation until **September 5,**
 3 **2019.** Its nature of business was listed as "Home Equity". It became inactive on January 5,
 4 2021 due to not filing the requisite documentation with the Washington Secretary of State.
 5 Defendant PATCH is not licensed with the Washington Department of Financial Institutions
 6 ("DFI") as a consumer lender, as required by RCW 31.04.025(1); 31.04.035(1). Defendant
 7 PATCH did register with the Washington Department of Revenue but there ~~is~~ are no records
 8 indicating it has ever paid taxes for conducting business in the State of Washington.

10 1.2 Defendant PATCH SERVICES, LLC ("Patch Services") is a Delaware limited
 11 liability company that was registered with the Washington Secretary of State as a foreign LLC
 12 on March 9, 2021. Its nature of business is listed as "Financial Servicers Provider". Defendant
 13 Patch Services is not licensed by Washington DFI as a consumer lender or loan servicer.
 14

15 Defendants PATCH and Patch Services appear to interchangeably use their names in
 16 the subject loan documents referring to themselves or being referred to as either "lender" or
 17 "investor".

18 1.3 Defendant FIRST AMERICAN TITLE INSURANCE COMPANY LENDERS
 19 ADVANTAGE ("Lenders Advantage") appears to be licensed in Washington state with the
 20 Office of the Insurance Commissioner using only the name FIRST AMERICAN TITLE
 21 COMPANY. It acted as an escrow agent in connection with the loan closing of the subject
 22 transaction. Ms. Cary will be investigating its licensing in Washington state to make certain
 23 that it is compliant such that it could act as an escrow agent in Washington. In connection with
 24 that closing, Defendant Lenders Advantage required Beverly to sign an Escrow Agreement
 25 which includes a mandatory arbitration clause. Mandatory arbitration clauses are expressly
 26

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1 prohibited under federal law in connection with residential mortgage loans which are the
 2 principal dwelling of the borrower. Other entities in the making of the loan, such as escrow
 3 companies, cannot assist lenders in trying to avoid that requirement by including a mandatory
 4 arbitration clause in other contractual terms.

5 1.4 **Jurisdiction.** This adversary proceeding is commenced pursuant to BR
 6 7001 *et seq.* and 11 U.S.C. §§ 502 (b)(1) and 506 (d). Although an adversary proceeding
 7 brought as an objection to claim with a counterclaim is a core proceeding under 28 U.S.C. §§
 8 157(b)(2)(B), (K) and/or (O) with non-core matters. Since the issues raised in this adversary
 9 proceeding include counterclaims that go beyond resolution of the claim itself, this matter is a
 10 non-core claim that lies beyond the scope of the creditor's proof of claim. Thus, outside of the
 11 bankruptcy context, many of the claims would not otherwise *require* adjudication in an Article
 12 III ~~court~~^{Court}. *See*, *Stern v. Marshall*, 564 U.S. 462, 496–98 (2011) (finding that a
 13 bankruptcy court had no constitutional power to evaluate the debtor's common law tort
 14 counterclaims because such claims were beyond the scope of the creditor's proof of claim and
 15 were claims of a nature that required an Article III court's adjudication).

16 1.5 **Jurisdiction.** The Plaintiff ~~here~~ is also requesting a jury trial and does not
 17 consent to have the jury ~~matter~~^{matters} heard in bankruptcy court and does not waive her rights.
 18 *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41 (1989).

19 1.6 **Venue.** Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

20 II. FACTS

21 2.1 Beverly is a single woman who has lived in King County for most of her life.
 22 She has one daughter, Alycia, who is currently 34 years old. Alycia's son Kameron is now 7
 23 years old and been diagnosed as autistic. The two of them have lived with Beverly since 2015.
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1 2.2 She worked for Delta Airlines as flight attendant for 31 years and she retired on
 2 December 1, 2001, after receiving a payout offer from Delta following the September 11
 3 crashes. She received a monthly pension payment from Delta until she reached the age of 62
 4 when it was reduced due to her beginning to receive Social Security. She still receives some of
 5 her pension income along with her Social Security, but her income is not substantial. Between
 6 the ages of 52 and 62, she also worked jobs at Home Depot, Chicos and the like to earn some
 7 extra money and increase future Social Security earnings.

8 2.3 In 1998, Beverly had a custom home built for her in Maple Valley, which she
 9 sold in 2006 in order to downsize. She made a profit of approximately \$210,000.00. She
 10 decided to rent for a whileawhile and in 2007, she purchased her current residence, located at
 11 27834 31st Place South, Auburn, WA 98001-1819 (“Property”) by putting down \$150,000.00.
 12 She obtained a traditional mortgage to make the purchase and made the monthly payments
 13 while living in it until September 2009, when she moved to Florida to be near her closest friend
 14 and take a break from the Pacific Northwest. She could not sell the Property at that time
 15 without taking a significant loss due to the collapsed housing market. Instead, she rented it out
 16 and used those funds to make the mortgage payments.

17 2.4 Beverly returned to Washington in 2012 because her daughter was talking about
 18 getting married and it was time to come home. She rented a place while continuing to rent out
 19 the Property until August 2015. In September 2015, Alycia, Kameron and Alycia’s husband
 20 Rick moved in. Later in 2015, Beverly refinanced the Property in order to reduce her interest
 21 rate from 6.35% to 4.56%. This resulted in a new mortgage with a balance of \$110,000.00 and
 22 a monthly payment of \$879.00.

23 2.5 By 2018, Beverly had very significant credit card debt and needed to get it under
 24

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 SECOND THIRD AMENDED COMPLAINT - 5

1 control, so she refinanced the Property again and ended up with a payment of \$1,150.00 per
2 month after she was paid off approximately \$50,000.00 in other debt.

3 2.6 The reason Beverly was struggling financially and incurring significant credit
4 card debt is because of unlawful charges incurred in her name by her daughter Alycia. Even
5 after the 2018 refinance, her credit card debt and balance on her car loan was approximately
6 \$62,000.00, some of which was attributable to fraudulent charges by Alycia on her credit cards
7 and from Alycia stealing her debit card and making unauthorized withdrawals.
8

9 2.7 Alycia's drug problems began when she fell at work and seriously injured her
10 back. She had unsuccessful back surgeries, including a failed spinal fusion in 2013. As a result,
11 she became addicted to pain killers, which began to destroy her life. Beverly did not realize the
12 problems Alycia was having with the drugs until she moved into her home in September 2015.
13 Once Alycia and her husband moved in with her, they began borrowing money from her for
14 legitimate purposes, but it also became apparent that Alycia was also using the money for drugs
15 as well. Beverly found herself devastated by her daughter's addiction and her efforts to deal
16 with it, but also the financial damage Alycia's actions continued to cause Beverly.
17

18 2.8 Compounding Beverly's stress was [the fact](#) that Alycia went to rehab once and a
19 detox place three times beginning in 2020 and nothing worked to stop her addiction. Alycia
20 and Rick separated about a year after they moved in and they were fighting over custody of her
21 grandson Kameron. Beverly helps care for Kameron and he has some serious problems. He was
22 born premature with lung damage and has been diagnosed as autistic. All of this just makes the
23 pressures on [Beverly](#) almost unbearable.
24

25 2.9 Beverly's financial problems became exacerbated as Alycia continued to use her
26 credit and debit cards without permission and in spite of Beverly's efforts to prevent her from

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SECOND THIRD AMENDED COMPLAINT - 6

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1 having access to them. She also stole checks and gained access to Beverly's VENMO account
 2 to steal more money. Alycia kept running up very significant debt in Beverly's name again and
 3 again. While Beverly was stressing out in 2019 about how she would ever be able to pay off the
 4 debt and knowing that it was unlikely she could obtain a traditional refinance, she was attracted
 5 by a mailing she received from PATCH Defendants. The appeal of the advertisement from
 6 Defendant PATCH was that the loan could close in two to three weeks withand the promise of
 7 providing a loan to people who could not get traditional loans. Because Beverly was desperate
 8 for a loan that would relieve the financial pressures she was facing, a quick closing without
 9 traditional underwriting was very attractive.
 10

11 2.10 Alycia became aware that Beverly was considering entering into the loan with
 12 PATCH Defendants and was pressuredpressuring her to get it. She was desperate and believed
 13 that no other options that included saving her home existed. She was also about to turn 70 and
 14 believed she wouldn't be able to work her way out of her desperate financial situation.
 15 Defendant PATCH offered very slick advertising and enticed Beverly into reaching out. Bev
 16 called the telephone number on the Defendant PATCH mailer but does not specifically
 17 remember with whom she spoke. The PATCH Defendants offered her what she interpreted as a
 18 loan since they were going to give her money to pay off her unsecured debt and she would have
 19 to repay it withplus interest at a later date. This was no ordinary loan, however, and Beverly did
 20 not receive any disclosures in advance of entering into the loan which she could assess or
 21 analyze in order to understand the loan terms.
 22

24 2.11 While the PATCH Defendants entitlesentitle and describesdescribe their
 25 contract as a "Purchase Option Agreement" and repeatedly disavows that it is a loan, the
 26 documents provided by the escrow company, Defendant Lenders Advantage, to Beverly for
 27

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1 signing referred to the documents as a “loan” and the proceeds as “Loan Amount”
 2 approximately 118 approximately 118 times. In numerous places throughout the documents
 3 drafted and presented to Beverly for signature by Defendant PATCH, there are references to
 4 amounts financed, fees and charges that Beverly must re-pay or pay outright that are solely for
 5 the benefit of the PATCH Defendants and to increase its profit when it obtains repayment of
 6 the amounts advanced to Beverly, as well as its profit from the transaction.
 7

8 2.12 PATCH Defendants did not suggest that Beverly should look at other options to
 9 deal with her credit cards including credit counseling, seeking a further traditional refinance,
 10 credit counseling, a reverse mortgage, or to discuss her situation with a bankruptcy attorney.
 11 While PATCH is not obligated to have these discussions, it is important in this instance since
 12 their product was being represented as not a loan at an effort in inducing her to choose it,
 13 instead of the other options. In fact, Beverly does not recall any of the discussions she had with
 14 PATCH Defendants wherein anyone told her she had the right to have the loan documents
 15 reviewed by an attorney. She has now been made aware that the documents she signed
 16 contained that language, but she has no memory of seeing it.
 17

18 2.13 Most importantly, Beverly did NOT receive the loan disclosures required under
 19 federal and state lending laws in advance of the loan signing. Instead, she was provided with
 20 alleged summaries of the documentation that no layperson would ever be able to actually
 21 understand and certainly no layperson would ever be able to understand the true cost associated
 22 with the making of this loan, nor of the risk of loss of homeownership that is very real given the
 23 outrageous terms. 12 C.F.R. § 1024.2(b) defines a “federally regulated mortgage loan” as
 24 follows:
 25

26 Federally related mortgage loan means:
 27

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SECOND THIRD AMENDED COMPLAINT - 8

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(1) Any loan (other than temporary financing, such as a construction loan):
(i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property, upon which there is either:
(A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit);

12 C.F.R. § 1024.2(b). Ms. Cary's loan meets that definition.

2.14 Under federal law, creditors may not generally exclude charges from the disclosed finance charge that are payable by the consumer incident to the extension of credit as required by 15 U.S.C. § 1605 and Regulation Z § 1026.4. If the creditor fails to include such a charge, it improperly discloses the finance charge in violation of 15 U.S.C. § 1638(a)(3) and Regulation Z § 1026.18(d). If the PATCH Defendants had actually calculated the annual percentage rate (APR) and disclosed it in advance of the making of the loan, as required by the Truth in Lending Act, the rate would have been based upon improperly calculated and undisclosed finance charges and an overstated amount financed in violation of 15 U.S.C. § 1606, Regulation Z § 1026.22. A creditor also unlawfully understates the APR in violation of 15 U.S.C. § 1638(a)(4) and Regulation Z § 1026.18(e). Regulation Z defines the term “finance charge” as “the cost of consumer credit.” 12 CFR § 1026.4 (2004).

2.15 The PATCH Defendants did not comply at all with any of the TILA provisions regarding advance disclosure of the loan terms in advance of the loan signing. This also violated the Washington Consumer Loan Act which incorporated TILA requirements into its language.

2.16 The PATCH Defendants are covered by TILA loan disclosure requirements

SECOND THIRD AMENDED COMPLAINT - 9

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1 because they make more than five (5) loans per year. The PATCH Defendants were required to
 2 provide Ms. Cary with the Loan Estimate within three business days of the receipt of the
 3 consumer's loan application. 12 C.F.R. § 1026.19(e)(1). That Estimate must contain a good
 4 faith estimate of credit costs and transaction terms. If any information necessary for an accurate
 5 disclosure is unknown, the creditor must make the disclosure based on the best information
 6 reasonably available at the time the disclosure is provided to the consumer and use due
 7 diligence in obtaining the information. 12 C.F.R. § 1026.19(e)(1)(i); Comment 19(e)(1)(i)-1.
 8 The Estimate must be in writing and contain the information prescribed in § 1026.37. The
 9 creditor must disclose only the specific information set forth in 12 C.F.R. § 1026.37(a) through
 10 (n), as shown in the CFPB's form in appendix H-2, consistent with 12 C.F.R. § 1026.37(o).

12 2.17 Delivery must satisfy the timing and method of delivery requirements. The
 13 creditor is responsible for delivering the Loan Estimate or placing it in the mail no later than
 14 the third business day after receiving the application. 12 C.F.R. § 1026.19(e)(1)(iii). The
 15 PATCH Defendants were required to use form H-24, promulgated by the CFPB. 12 C.F.R. §
 16 1026.37(o)(3)(i). PATCH Defendants did not make any disclosures within three business days
 17 of Ms. Cary's application or at all, nor did they use form H-24.

19 2.18 Rather than providing Beverly with standard loan terms which complied with
 20 federal and state lending laws, The PATCH Defendants demanded that she re-pay the loan
 21 with a percentage of her home's equity through a complex labyrinth of loan terms that no
 22 average consumer and even most experienced lawyers would be able to follow and understand,
 23 let alone calculate the interest rate, repayment requirements, etc. The Agreement also included
 24 an initial reduction in the alleged value of the Property and allowed Defendant PATCH to
 25 exclusively control the process of determining the value of the Property throughout the history

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1 of the transaction.

2.19 Further, the unlawful loan provided by the PATCH Defendants included a
 requirement, not disclosed in advance and only provided at the loan signing, of a **non-**
revocable Power of Attorney (“POA”) giving the PATCH Defendants the power to control the
 entirety of the contractual relationship and stealing from Beverly any control she might have
 over her home, the Property. The very broad powers in the POA includes: (1) allowing
 Defendant PATCH to force the sale of Beverly’s home in the event she files a bankruptcy and
 if Beverly fails to “maintain”, “preserve” or “repair” the Property according to the unilateral
 discretion of Defendant PATCH. The definition of “maintain” and “repair” includes
 such generic terms as keeping the Property in “good condition”. Again, allowing Defendant
 PATCH to decide for itself and without giving Beverly any ability to challenge its decisions,
 whether she is or is not keeping the Property in “good condition”, which then permits
 Defendant PATCH to force the sale of her home and repeat its very significant profits that it
 disavows is interest. Beverly maintains that the amounts over and above what was loaned to her
 is interest that Defendants seek to mischaracterize in an effort at avoiding federal and state
 lending laws.

2.20 Believing there were no other options and facing immense financial pressure,
 Beverly signed the PATCH Defendants’ documents on or about **July 3, 2019**, approximately
 two months **before** Defendant PATCH had registered to conduct any business in the State of
 Washington. And as noted above, Defendant PATCH was not then and never has been licensed
 to engage in consumer lending and to take a lien interest on Beverly’s residence in the State of
 Washington. That lien is evidenced by a Deed of Trust, which is consistent with Washington’s
 requirements that any encumbrance be evidenced by a deed. RCW 64.04.010. The PATCH

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1 Defendants' Deed of Trust is most certainly an "encumbrance". Further, a deed of trust in
 2 Washington is treated as a mortgage on real property. RCW 61.24.020. This is irrespective of
 3 the PATCH Defendants efforts to characterize the transaction as anything other than a
 4 mortgage loan. *See also*, RCW 61.24.005(2) which defines "beneficiary" in a deed of trust as
 5 "the holder of the instrument or document evidencing the obligations secured by the deed of
 6 trust". Defendant PATCH has identified itself as the "beneficiary" in the Deed of Trust it
 7 required Beverly to sign.

9 2.21 Beverly failed to understand the core terms of the loan, which is understandable
 10 when one tries to read the complex and Byzantine terms included in the loan documents, such
 11 as Defendant PATCH's claim of a right to force the sale of her home prior to the end of the 10
 12 year term of the loan; exactly how the repayment amount will be calculated; how much Beverly
 13 would owe six (6) months after the documents were signed; how much would be owed after
 14 twelve (12) months; how much would be owed after three (3) years, and so on. In return for
 15 the approximately \$62,000 that Defendant PATCH paid out on the loan to Beverly and on her
 16 behalf for her debts, Beverly had no idea that it would demand in excess of \$126,000.00 less
 17 than three years later, as it has done in her bankruptcy case.

19 2.22 Among the other absurd terms of the unlawful loan made by the PATCH
 20 Defendants are the following, including terms of the Real Estate Option Agreement, Sections
 21 5.3, 6.1, 6.2, 7 and 19, including subsections and in particular, Section 20, which requires
 22 Beverly to indemnify Defendant PATCH for any potential claims while there is no obligation
 23 from Defendant PATCH to Beverly:

25 a. It allows the "Investor", Defendant PATCH, to order an appraisal
 26 without Beverly's consent and to charge her for it;
 27 b. If Beverly disagrees with the appraised amount, she has to pay for

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1 another one herself and if she and Defendant PATCH cannot reach an agreement, she is
 2 required to arbitrate the issue. As noted above, mandatory arbitration in connection with the
 3 making of a residential mortgage loan which is Beverly's principal dwelling is illegal under
 4 federal law;

5 c. The Owner, Beverly, will have a different required "payout" amount
 6 depending upon what sort of transaction she enters into in the future to either refinance the
 7 Property, sell it to a third party, sell it to Defendant PATCH, etc. These are the sort of uncertain
 8 and differing repayment terms which violate federal and state lending laws;

9 d. Specific assertions of what Beverly has to repay Defendant PATCH
 10 while simultaneously contending that the transaction is not a loan and that interest is not being
 11 charged.

12 2.23 In spite of the PATCH Defendants' repeated assertions throughout the loan
 13 documents that the transaction is not a loan, the accompanying Deed of Trust confirms that [a](#)
 14 [loan that](#) is precisely the nature of the transaction in multiple places. Paragraph 7 begins with
 15 the following language:

16 Default and Foreclosure and Power of Sale.

17 Upon default by Trustor in the performance of or upon breach by Trustor of any
 18 of the rights and obligations that are secured by this Security Instrument as
 19 specified above, **Beneficiary may declare all sums secured by this Security
 20 Instrument immediately due and payable and may invoke the power of sale
 21 and any other remedies permitted by applicable law, including an action in
 22 any court of competent jurisdiction to foreclose this Security Instrument as a
 23 deed of trust or mortgage.**

24 Deed of Trust, Paragraph 7 (emphasis added). The Trustor is Ms. Cary and the Beneficiary is
 25 Defendant PATCH.

26 2.24 The Deed of Trust at Paragraph 10 also gives the Trustee powers that only the
 27 Beneficiary may demand it exercise, in contravention of its duties under Washington law to
 28 both the "borrower" (in this instance, the borrower is identified as the "Trustor") and the
 29 "beneficiary". RCW 61.24.010(4).

30 2.25 At Paragraph 12, the exclusive duty to pay for the services of the Trustee, which
 31 only Defendant PATCH controls and directs, is to be borne by Trustor, Ms. Cary. This too is a

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1 blatant violation of Washington law and further evidences just how much the entirety of the
 2 subject loan transaction is one-sided and designed to guarantee that Ms. Cary ends up losing
 3 her home and all of the equity in it to Defendant PATCH.

4 2.26 The Deed of Trust also purports to be a separate lien on personal property that is
 5 part of the Property, including fixtures, under UCC Article 9. This assertion is absurd and
 6 contradictory to the provisions of Washington law that makes clear that a deed of trust secures
 7 real property and only real property. Further, “fixtures” are not separate from structures on and
 8 part of real property.

9 2.27 Ms. Cary is not listing all of the onerous and unlawful terms of the loan
 10 agreement herein, but she does assert that every part of the loan documentation violates federal
 11 and state lending laws, as well as Washington real property law. She also did not realize she
 12 had agreed to a mandatory arbitration clause until the loan documents were reviewed with her
 13 attorneys. Had she not taken action to reject the loan terms and rescind the loan entirely under
 14 TILA with the assistance of her attorneys, she would have been bound by all of the loan terms,
 15 including the unlawful mandatory arbitration clause.

16 2.28 The PATCH Defendants may have further violated TILA and state law when it
 17 made the unilateral decision to have Ms. Cary’s escrow handled by an escrow agent, Defendant
 18 Lenders Advantage, which may not be licensed in Washington state in a manner that allowed it to
 19 act as an escrow agent in Washington state. The escrow paperwork indicated that Defendant
 20 Lenders Advantage was operating under a California license – not a Washington license. If
 21 Defendant Lender’s Advantage is actually just a part of First American Title Insurance and is
 22 licensed by the Washington Department of Insurance, then it can act as an escrow agent in
 23 Washington as long as it complies with the Escrow Agent Registration Act, RCW 18.44, et seq.

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1 2.29 Defendant Lenders Advantage also included a mandatory arbitration agreement
2 in its escrow paperwork which is prohibited by TILA. That agreement purports to require
3 arbitration of any and all disputes relating to the loan terms. By doing so, Defendant Lenders
4 Advantage was acting in collusion with the PATCH Defendants to further violate TILA which
5 prohibits the use of a mandatory arbitration agreement in connection with a federally regulated
6 mortgage loan. 15 U.S.C. § 1639c(e)(3). The PATCH Defendants cannot use a third party to
7 impose terms upon a borrower that are prohibited by federal law.
8

9 2.30 As evidenced by the fact that Beverly had to file a Chapter 13 bankruptcy,
10 obtaining a loan from Defendant PATCH did not solve Beverly's financial problems. She
11 found herself back in financial trouble again due to Alycia's continued addiction problems. She
12 was required to file this bankruptcy to get some relief, but that was how she discovered the
13 horrific nature of the loan she obtained from Defendant PATCH when she had to try to figure
14 out how much she owed on the loan after a short period of time.
15

16 2.31 Upon request by Beverly's bankruptcy counsel, Defendant PATCH provided a
17 "Final Payoff Statement" in the amount of \$126,554.00 dated March 5, 2021. Defendant
18 PATCH later filed a Proof of Claim in the amount of \$122,500.00 on July 5, 2021. Apparently,
19 Defendant PATCH cannot even calculate its own payoff calculations using the formula it
20 created. But these amounts make it very clear that the transaction is a loan and a very expensive
21 one at that. Defendant PATCH lent Ms. Cary \$64,000.00 on or about July 13, 2019 and less
22 than two years later, it was demanding almost double that amount in repayment. That
23 constitutes an interest rate of almost 50% per annum.

25 2.32 Defendant PATCH has even gone so far as to try to repeatedly oppose Beverly's
26 attempts to get lawyers hired to represent her in challenging the validity of this loan agreement,

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~~SECOND~~THIRD AMENDED COMPLAINT - 15

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1 telling this Court that Beverly doesn't have a right to challenge its unlicensed loan product and
 2 making threats about incurring legal fees in connection with its efforts to prevent her from
 3 obtaining recovery that Defendant PATCH maintains it can charge her under the loan contract.
 4 In other words, Defendant PATCH is using its high-priced Silicon Valley lawyers to waste this
 5 Court's time by making frivolous arguments and legally unsupported opposition to Ms. Cary's
 6 right to challenge the terms of this unlawful loan while preparing to charge her for those
 7 efforts. This is yet another example of the horrific and onerous nature of the contractual terms
 8 of the unlawful loan provided to Beverly by Defendant PATCH, and the predatory nature of
 9 Defendant PATCH and all of its affiliated entities, as well as the members of the Defendants'
 10 LLCs.

12 2.33 Defendant Lenders Advantage has acted in collusion with the other Defendants
 13 to facilitate this unlawful loan by providing escrow services in Washington state when it ismay
 14 not be licensed to do so, and by insisting that Ms. Cary sign an escrow agreement that includes
 15 a mandatory arbitration agreement, in direct contravention of the federal lending laws.

17 2.34 Beverly has incurred damages and been injured in amounts to be determined
 18 later by the trier of fact but which include at this stage illegal and unlawful demands for interest
 19 and fees which Defendant PATCH is demanding in violation of Washington law. As outlined
 20 below, a loan made by an unlicensed lender which is secured by a residence does not allow the
 21 lender to recovery **any fees or interest** on the loan. RCW 31.04.035(2). She has also incurred
 22 attorneys' fees and costs relating to having to obtain information from the PATCH Defendants
 23 about the alleged loan balance, and to respond to the Proof of Claim and other efforts in her
 24 Chapter 13 bankruptcy attributable to the actions of the PATCH Defendants. Further, Ms. Cary
 25 is required to take this action to make certain that the unlawful arbitration clause is not included
 26

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1 in the loan agreement with the PATCH Defendants and to make certain that the PATCH
2 Defendants cannot enforce the unlawful terms which it has tried to impose upon Ms. Cary, in
3 contravention of federal and state lending laws.

4 **III. CAUSES OF ACTION**

5 First Cause of Action
6 Quiet Title and To Determine
7 The Nature and Extent of Any Lien
as Against Defendants PATCH and Patch Homes

8 3.1 Ms. Cary incorporates herein by reference as though fully set forth at length
9 each and every allegation and statement contained in the paragraphs above, inclusive, of the
10 Factual Allegations above.

12 3.2 Under Washington law, RCW 7.28.010, Ms. Cary has the right to bring this
13 action in order to remove the cloud on title in the form of an unlawful mortgage loan secured
14 by a Deed of Trust that has been generated, created and recorded against the subject real
15 Property by Defendants PATCH and Patch Homes, in an attempt to gain for in a monetary
16 recovery against the Property to which it is not entitled, as it is above and beyond any right it
17 may have for making an unlawful loan.

19 Second Cause of Action
20 Violation of the Consumer Loan Act, which is a
Per Se Violation of the Consumer Protection Act
as Against Defendants PATCH and Patch Homes

22 3.3 Ms. Cary incorporates herein by reference as though fully set forth at length
23 each and every allegation and statement contained in all of the Sections above, inclusive, and
24 the Facts Statements, inclusive, and Paragraphs 3.1 through 3.2 of the Causes of Action above.

25 3.4 The Consumer Loan Act, RCW 31.04.035, **requires** any person or entity to be
26 licensed under the CLA if they obtain a lien on a borrower's residence. Defendants PATCH

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1 and Patch Homes do not have a license to make a consumer loan and the loan transaction at
2 issue is a consumer loan secured by Ms. Cary's residence. A violation of RCW 31.04.035 is a
3 *per se* violation of the Consumer Protection Act and as such, Defendants PATCH and Patch
4 Homes are liable to Ms. Cary for their violations of the law, as more particularly described
5 above in Facts Section.

7 3.5 A *per se* violation of the CPA under the CLA, RCW 31.04.208, meets the
8 requirements of (1) unfair or deceptive act, (2) in trade or commerce, and (3) affecting the
9 public interest. *Id.* As identified above, Ms. Cary has suffered injuries and incurred damages as
10 a direct result of the actions of Defendants PATCH and Patch Homes in connection with their
11 violations of the CLA. Therefore, she is entitled to recover damages, treble damages and
12 reasonable attorney fees and costs pursuant to the statute, as well as permanent injunctive relief
13 to make certain that other Washington consumers are not similarly harmed by the actions of
14 Defendants PATCH and Patch Homes. In addition, Defendants PATCH and Patch Homes may
15 not collect **any** interest on the loan nor any fees, and if any of these amounts have already been
16 paid by Ms. Cary, either through the loan terms or other means, Defendants PATCH and Patch
17 Homes must refund those amounts to her under Washington law.
18

Third Cause of Action

Violation of the Washington State Usury Statute
Which is a *Per Se* Violation of the CPA
as Against Defendants PATCH and Patch Homes

22 3.6 Ms. Cary incorporates herein by reference as though fully set forth at length
23 each and every allegation and statement contained in all of the Sections above, including the
24 Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.5 of the
25
26 Causes of Action above.

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SECOND THIRD AMENDED COMPLAINT - 18

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1 3.7 Under RCW 19.52.020(1),

2 (1) Except as provided in subsection (4) of this section, any rate of interest shall
3 be legal so long as the rate of interest does not exceed the higher of: (a) Twelve
4 percent per annum; or (b) four percentage points above the equivalent coupon
5 issue yield (as published by the Board of Governors of the Federal Reserve
6 System) of the average bill rate for twenty-six week treasury bills as determined
7 at the first bill market auction conducted during the calendar month immediately
8 preceding the later of (i) the establishment of the interest rate by written
9 agreement of the parties to the contract, or (ii) any adjustment in the interest rate
10 in the case of a written agreement permitting an adjustment in the interest rate. No
11 person shall directly or indirectly take or receive in money, goods, or things in
12 action, or in any other way, any greater interest for the loan or forbearance of any
13 money, goods, or things in action.

14 RCW 19.52.020(1).

15 3.8 Given the current interest rate published by the Board of Governors of the
16 Federal Reserve System is extremely low, the effective cap on interest rates in Washington
17 state is twelve percent (12%) per annum. The loan made to Beverly by Defendants PATCH and
18 Patch Homes carries an interest rate demonstrably in excess of 12 percent per annum based
19 upon the amounts demanded by the PATCH Defendants in her Chapter 13 bankruptcy.

20 3.9 RCW 19.52.030 also provides that:

21 (1) If a greater rate of interest than is allowed by statute shall be contracted for or
22 received or reserved, the contract shall be usurious, but shall not, therefore, be
23 void. If in any action on such contract proof be made that greater rate of interest
24 has been directly or indirectly contracted for or taken or reserved, the creditor
25 shall only be entitled to the principal, less the amount of interest accruing thereon
26 at the rate contracted for; and if interest shall have been paid, the creditor shall
27 only be entitled to the principal less twice the amount of the interest paid, and less
 the amount of all accrued and unpaid interest; and the debtor shall be entitled to
 costs and reasonable attorneys' fees plus the amount by which the amount the
 debtor has paid under the contract exceeds the amount to which the creditor is
 entitled . . .

RCW 19.52.030(1).

3.10 Consistent with the Usury statute, Ms. Cary is entitled to recover **twice** the

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1 interest that she has already paid on the loan, which in this case may be that amount which the
 2 PATCH Defendants are demanding in the bankruptcy has already “accrued” and should be
 3 deducted from the equity in her home. The PATCH Defendants is only entitled to recover the
 4 principal amount provided to Ms. Cary, less any interest which has been accrued and to recover
 5 her reasonable attorneys’ fees and costs incurred to date. This will also include the costs she
 6 was charged in connection with the making of the loan, including the escrow and other fees.
 7

8 3.11 The Usury statute also allows for a *per se* CPA violation in the event of a
 9 violation of the statute. RCW 19.52.036. A violation of the statute meets the unfair or deceptive
 10 and trade or commerce elements of the CPA.

11 3.12 Ms. Cary can prove the “public interest” element of a CPA claim which requires
 12 proof that the PATCH Defendants “had the capacity to injure other persons” and “has the
 13 capacity to injure other persons” because it continues in its business as of the writing of this
 14 Amended Complaint. This is also evidenced by the actions of the PATCH Defendants in Ms.
 15 Cary’s bankruptcy wherein they tried to collect a usurious interest amount by filing a Proof of
 16 Claim for the same and because of its actions to try to prevent Ms. Cary from being able to hire
 17 lawyers to represent her.
 18

19 3.13 Ms. Cary, acting through her attorneys, is also aware that the PATCH
 20 Defendants continue to do business by advertising online through the Noah website offering the
 21 same products that she was conned into signing.
 22

23 3.14 Ms. Cary has suffered injuries and incurred damages as a direct result of the
 24 actions of Defendants PATCH and Patch Homes in connection with their violations of the
 25 Washington usury statute. Therefore, she is entitled to recover damages, treble damages and
 26 reasonable attorney fees and costs pursuant to the statute, as well as permanent injunctive relief
 27

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SECONDTHIRD AMENDED COMPLAINT - 20

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1 to make certain that other Washington consumers are not similarly harmed by their actions. In
2 addition, the PATCH Defendants may not collect **any** interest on the loan nor any fees, and if
3 any of these amounts have already been paid by Ms. Cary, either through the loan terms or
4 other means, the PATCH Defendants must refund double those amounts to her under
5 Washington law.

Fourth Cause of Action
Violation of the Consumer Protection Act
as Against Defendants PATCH and Patch Homes

9 3.15 Ms. Cary incorporates herein by reference as though fully set forth at length
10 each and every allegation and statement contained in all of the Sections above, including the
11 Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.14 of
12 the Causes of Action above.

14 3.16 The PATCH Defendants have made numerous misrepresentations about the
15 terms of the contract and whether or not it is a loan, whether the terms of the loan are compliant
16 with Washington state law (they are not) and whether the loan can even be made under
17 Washington law, as well as the amounts owing under the loan and whether PATCH Defendants
18 can charge her interest and any fees on the loan, as more particularly described above. These
19 misrepresentations were unfair and deceptive, and they occurred in trade or commerce, which
20 is PATCH Defendants' business model and purpose.

22 3.17 Ms. Cary maintains, based upon information and belief, that the Defendants
23 have engaged in making similar misrepresentations to other Washington homeowners and/or
24 that it had the capacity to do so previously and/or has the capacity to do so in the future.

25 3.18 All of Ms. Cary's injuries and damages were caused by the PATCH Defendants
26 and they are directly responsible for those injuries and damages.

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SECOND THIRD AMENDED COMPLAINT - 21

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Fifth Cause of Action
Intentional and Negligent Misrepresentation
as Against PATCH Defendants

3.19 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in all of the Sections above, including the Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.18 of the Causes of Action above.

3.20 Ms. Cary maintains that there were numerous intentional and/or negligent misrepresentations made to her by the PATCH Defendants about the terms of the loan, by and through their agents, as described more particularly hereinabove.

3.21 Ms. Cary was particularly harmed by the specific misrepresentations made by the representatives of PATCH Defendants about the terms of the loan, and intentional omissions about the loan terms prior to signing since they did not provide her with any information about the loan terms in advance, as described more particularly in the Facts section above. Included in the misrepresentations were assertions regarding the fact that it is a loan, in spite of PATCH Defendants' assertions to the contrary, the correct amount owing at any given time after the loan is made, the amounts that may be demanded in connection with the loan under Washington law, and the rights to completely control all of the terms of the contract and whether or not Beverly is complying with the loan terms.

3.22 As a result of the actions of the PATCH Defendants, which is also referenced in the loan documents, Beverly has been harassed for monies that she does not owe and now faces the risk of losing her home and all of her equity therein.

Sixth Cause of Action
Violations of the Escrow Registration Agent Act, RCW 18.44, et seq.
Which Constitutes A Violation of the CPA as Against

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SECONDTHIRD AMENDED COMPLAINT - 22

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Defendant First American Title Insurance Company Lenders Advantage

3 Ms. Cary incorporates herein by reference as though fully set forth at length
very allegation and statement contained in all of the Sections above, including the
gements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.22 of
s of Action above.

3.24 RCW 18.44.011(8) defines who may act as an escrow agent under Washington law:

"Escrow agent" means any person engaged in the business of performing for compensation the duties of the third person referred to in subsection (7) of this section.

RCW 18.44.011(8).

3.25 RCW 18.44.011(7) describes the business practices which constitute an “escrow” which is undertaken by an “escrow agent”:

"Escrow" means any transaction, except the acts of a qualified intermediary in facilitating an exchange under section 1031 of the internal revenue code, wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he or she is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof. "Escrow" includes the collection and processing of payments and the performance of related services by a third party on seller-financed loans secured by a lien on real or personal property but excludes vessel transfers.

RCW 18.44.011(7). Emphasis added.

3.26 Defendant Lenders Advantage is an “escrow agent” as defined by RCW 18.44.011(8) and it performed the acts described in RCW 18.44.011(7) in connection with providing escrow services to Ms. Cary and the PATCH Defendants relating to the loan that is

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SECOND THIRD AMENDED COMPLAINT - 23

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1 the subject of this litigation.

2 3.27 Violations of theThe Escrow Agent Registration Act, RCW 18.44.301

3 includeincludes the following “Prohibited Practices”:

4 It is a violation of this chapter for any **escrow agent**, controlling person,
5 officer, designated escrow officer, independent contractor, employee of an escrow
business, or other person subject to this chapter to:

6 (1) Directly or indirectly employ any scheme, device, or artifice to defraud
7 or **mislead borrowers or lenders** or to defraud any person;

8 (2) **Directly or indirectly engage in any unfair or deceptive practice**
9 **toward any person;**

10 (4) **Knowingly make, publish, or disseminate any false, deceptive, or**
11 **misleading information in the conduct of the business of escrow, or relative to the**
12 **business of escrow or relative to any person engaged therein;**

13 (11) **Fail to comply with any requirement of any applicable federal or**
14 **state act including the truth in lending act, 15 U.S.C. Sec. 1601 et seq. and**
15 **Regulation Z, 12 C.F.R. Sec. 226;** the real estate settlement procedures act, 12
16 U.S.C. Sec. 2601 et seq. and Regulation X, 24 C.F.R. Sec. 3500; the equal credit
17 opportunity act, 15 U.S.C. Sec. 1691 et seq. and Regulation B, Sec. 202.9, 202.11,
18 and 202.12; Title V, Subtitle A of the financial modernization act of 1999 (known
as the Gramm-Leach-Bliley act), 12 U.S.C. Secs. 6801-6809; the federal trade
commission's privacy rules, 16 C.F.R. Secs. 313-314, mandated by the Gramm-
Leach-Bliley act; as these acts existed on January 1, 2007, or such subsequent
date as may be provided by the department by rule, or any other applicable
escrow activities covered by the acts;

19

20 RCW 18.44.301(1), (2), (4), (11). Emphasis added.

21 3.28 Ms. Cary maintains that Defendant Lenders Advantage in actions more
22 particularly described above which constituted violations of the Prohibited Practices, RCW
23 18.44.301(1), (2), (4) and (11) by engaging in a “scheme, device, or artifice to defraud or
24 mislead borrowers or lenders or to defraud any person” (1); by “directly or indirectly engage in
25 any unfair or deceptive practice toward any person” (2); knowingly make, publish, or
26 disseminate any false, deceptive, or misleading information in the conduct of the business of

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1 escrow, or relative to the business of escrow or relative to any person engaged therein (4); and
 2 fail to comply with any requirement of any applicable federal or state act including the
 3 ~~truth~~Truth in Lending Act, 15 U.S.C. ~~See~~§ 1601 *et seq.* and Regulation Z, 12
 4 C.F.R. ~~See~~§ 226 (11) when it consummated an obviously unlawful loan that included
 5 paperwork which expressly disavowed being a loan and which obviously violated TILA in
 6 numerous ways, including the fact that none of the documents required by TILA were included
 7 in the loan documents.

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9 3.29 Defendant Lenders Advantage violated the Washington Consumer Protection
 10 Act"("CPA"), RCW 19.86, *et seq.*, in connection with its actions during its handling of the
 11 escrow for Defendant PATCH and Ms. Cary. Those actions are identified as follows:
 12 a. It engaged in "unfair or deceptive acts or practices in the conduct of any trade or
 13 commerce." RCW 19.86.020. Those "unfair" and "deceptive" acts included the inclusion of the
 14 Arbitration Agreement in the Escrow General Instructions, which required that Ms. Cary
 15 pursue "all disputes and claims arising out of or relating to this Escrow must be resolved
 16 by arbitration."

17 **19. AGREEMENT TO ARBITRATE.**

18 (a) Except as indicated in the paragraph regarding CONFLICTING
INSTRUCTIONS & RELATED DISPUTES, above, all disputes and claims
arising out of or relating to this Escrow must be resolved by arbitration.
 19 Notwithstanding the foregoing, any party may bring an individual action in small
claims court. Any dispute as to the arbitrability of claims or the scope or
enforceability of this arbitration provision, or as to the interpretation of paragraph
 20 (c) below, is for the court to decide. This Escrow evidences a transaction in
interstate commerce, and thus the Federal Arbitration Act governs the
interpretation and enforcement of this provision. This arbitration provision shall
 21 survive termination of the Escrow.

22 Escrow General Instructions, Paragraph 19. (Emphasis added.) Given the broad language of the
 23 AGREEMENT TO ARBITRATE that Defendant Lender's Advantage required Ms. Cary to

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1 sign, it applies to any of her challenges to the entirety of the transaction with the PATCH
2 Defendants, as well as the escrow agent.

3 b. The Truth in Lending Act (TILA) prohibits the use of an arbitration clause in
4 connection with mortgage lending secured by the borrower's primary dwelling. 15 U.S.C. §
5 1639c(e)(3). Thus, Defendant Lender's Advantage was actively engaged with the PATCH
6 Defendants in assisting them in violating those provisions of TILA and imposing an arbitration
7 clause upon Ms. Cary that is prohibited by federal law in this sort of lending transaction. These
8 actions constituted an unfair and deceptive act.

9 c. Defendant Lender's Advantage also participated in an escrow for a transaction
10 that purported not to be a loan, but which it treated as a loan for purposes of the escrow,
11 including the execution of a Deed of Trust which is defined in Black's Law Dictionary as:

12 An instrument in use in many states, taking the place and serving the uses of a
13 common-law mortgage, by which the legal title to real property is placed in one or
14 more trustees, to secure the repayment of a sum of money or the performance
15 of other conditions.

16 Black's Law Dictionary. (Emphasis added.) This also constituted an "unfair" and "deceptive"
17 act, as well as publication and/or dissemination of "false" and "misleading" information to Ms.
18 Cary.

19 d. Defendant Lender's Advantage engaged in that action in connection with its
20 business of providing escrow services, which constitutes "trade or commerce". Paragraph
21 19(a), "This Escrow evidences a transaction in interstate commerce . . ."

22 d. Defendant Lender's Advantage's actions had and has "the capacity to injure
23 other persons." RCW 19.86.093(c). This is demonstrated by way of the fact that the document
24 signed by Ms. Cary is titled "Escrow General Instructions". It is Defendant Lender's

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Advantage's "General Instructions" utilized by at least a significant portion of their escrow customers. Discovery in this case will confirm how often it has been used on others to impose upon them an arbitration clause that violates TILA.

e. The actions of Defendant Lender's Advantage caused Ms. Cary damages in the form of participating in and helping facilitate the inducement to get her to enter into a loan transaction that was nothing like what it purported to be and without any of the required loan disclosures mandated under federal and state law. If the PATCH loan is held to be enforceable, it would result in Ms. Cary likely losing most, if not all, of the equity in her home, and would allow a third party to have complete control of all decisions to be made regarding her home for the entirety of the loan contract.

f. Defendant Lender's Advantage has also caused Ms. Cary injury in the form of having to pay her bankruptcy lawyer to deal with PATCH's demands for payment of approximately double the amount it loaned to Ms. Cary after only two years through the filing of a Proof of Claim. She was also injured by the PATCH Defendants making that demand, even though she has not yet been required to pay any of it.

g. Defendant Lender's Advantage helped cause the damages and injuries suffered by Ms. Cary through its intentional actions which were always designed to assist only the PATCH Defendants and were done either with the intent to harm Ms. Cary or with a callous and intentional disregard of the harm that would come to an unsophisticated borrower entering into an exceedingly complex loan transaction that purported to not even be a loan.

3.30 For all of the above reasons and based upon its actions, Ms. Cary maintains that Defendant Lender's Advantage is liable to her for violations of the Consumer Protection Act, RCW 19.86, et seq.

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Seventh Cause of Action
Violations of the Truth in Lending Act, 15 U.S.C. § 1206, et seq.
Against PATCH Defendants

3.2931 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in all of the Sections above, including the Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.2830 of the Causes of Action above.

3.3032 The PATCH Defendants are required by TILA to make numerous loan disclosure because they make more than five (5) loans per year and because the loan met the definition of a “federally related mortgage loan”, which included:

(1) Any loan (other than temporary financing, such as a construction loan):
 (i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property, upon which there is either:
 (A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit);

3.3+33 For that reason, the PATCH Defendants were required to provide Ms. Cary with a Loan Estimate within three business days of the receipt of the consumer's loan application. 12 C.F.R. § 1026.19(e)(1). It was required to contain a good faith estimate of credit costs and transaction terms, based upon the best information reasonably available at the time the disclosure is provided to the consumer and use due diligence in obtaining the information. 12 C.F.R. § 1026.19(e)(1)(i); Comment 19(e)(1)(i)-1. The Estimate was required to be in writing and contain the information prescribed in 12 C.F.R. § 1026.37. The creditor must disclose only the specific information set forth in 12 C.F.R. § 1026.37(a) through (n), as shown in the

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~~SECOND~~ THIRD AMENDED COMPLAINT - 28

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1 CFPB's form in appendix H-2, consistent with 12 C.F.R. § 1026.37(o).

2 3.3234 The creditor is responsible under TILA for delivering the Loan Estimate or
3 placing it in the mail no later than the third business day after receiving the application. 12
4 C.F.R. § 1026.19(e)(1)(iii)). The PATCH Defendants were required to use form H-24,
5 promulgated by the CFPB. 12 C.F.R. § 1026.37(o)(3)(i). PATCH Defendants did not make any
6 disclosures within three business days of Ms. Cary’s application or at all, nor did they use form
7 H-24.
8

9 3.3335 Rather than providing Beverly with standard loan terms which complied with
10 federal and state lending laws, The PATCH Defendants demanded that she re-pay the loan with
11 a percentage of her home's equity through a complex labyrinth of loan terms that no average
12 consumer and even most experienced lawyers would be able to follow and understand, let alone
13 calculate the interest rate, repayment requirements, etc. The Agreement also included an initial
14 reduction in the alleged value of the Property and allowed Defendant PATCH to exclusively
15 control the process of determining the value of the Property throughout the history of the
16 transaction.

18 3.3436 Based upon these violations of TILA, Ms. Cary is entitled to rescind the loan
19 and she seeks that recovery from the Court. 12 C.F.R. § 1026.23(a)(3). Simultaneous with the
20 filing of this Third Amended Complaint, Ms. Cary will also send a Rescission Letter as
21 contemplated by the statute.

Eighth Cause of Action
Violations of the Truth in Lending Act, 15 U.S.C. § 1639c(e)(3)
Against PATCH Defendants

25 3.3537 Ms. Cary incorporates herein by reference as though fully set forth at length
26 each and every allegation and statement contained in all of the Sections above, including the

~~SECOND~~ THIRD AMENDED COMPLAINT - 29

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1 Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.[3436](#) of
2 the Causes of Action above.

3 [3.3638](#) TILA, at 15 U.S.C. § 1639c(e)(3), prohibits the imposition of an arbitration
4 clause on any mortgage loan which is secured by the borrower's primary dwelling:

5 (e) Arbitration

6 (1) In general

7 No residential mortgage loan and no extension of credit under an open
8 end consumer credit plan secured by the principal dwelling of the
9 consumer may include terms which require arbitration or any other
10 nonjudicial procedure as the method for resolving any controversy or
settling any claims arising out of the transaction.

11

12 (3) No waiver of statutory cause of action

13 No provision of any residential mortgage loan or of any extension of
14 credit under an open end consumer credit plan secured by the principal
15 dwelling of the consumer, and no other agreement between the consumer
16 and the creditor relating to the residential mortgage loan or extension of
17 credit referred to in paragraph (1), shall be applied or interpreted so as to
bar a consumer from bringing an action in an appropriate district court of
18 the United States, or any other court of competent jurisdiction, pursuant
19 to section 1640 of this title or any other provision of law, for damages or
other relief in connection with any alleged violation of this section, any
other provision of this subchapter, or any other Federal law.

20 15 U.S.C. § 1639c(e)(3).

21 [3.3739](#) The PATCH Defendants acted in collusion with Defendant Lenders Advantage
22 and chose to use that entity as the escrow agent in this transaction and allowed it to include a
23 mandatory arbitration clause in the closing documents which sought to impose such terms on
24 the entirety of the loan transaction, in direct contravention of federal law.

25 [3.3840](#) The PATCH Defendants are charged with knowing the federal and state lending

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SECONDTHIRD AMENDED COMPLAINT - 30

1 laws which applied to this transaction and their intentional actions in violating all of those
2 lending laws is evidenced in the entirety of the transaction, including the repeated assertions in
3 the loan documents themselves that the transaction was not a loan.

3.3941 The PATCH Defendants therefore violated federal law by including a
mandatory arbitration agreement in the subject loan terms.

7 //

Ninth Cause of Action
Violations of the CPA Based Upon Unlawful Imposition
Of a Mandatory Arbitration Clause on Plaintiff
In Violation of Federal Law As Against
Defendant First American Title Insurance Company Lenders Advantage
And The Patch Defendants

12 3.4042 Ms. Cary incorporates herein by reference as though fully set forth at length
13 each and every allegation and statement contained in all of the Sections above, including the
14 Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.3941 of
15 the Causes of Action above.

17 3.4143 As noted above, Defendant Lenders Advantage, acting in collusion with the
18 PATCH Defendants, included an arbitration clause in the escrow documents which is designed
19 to bind Ms. Cary to mandatory arbitration in connection with the making of the subject loan, in
20 direct violation of the requirements of federal law. The Truth in Lending Act, 15 U.S.C. §
21 1639c(e) prohibits the use of a binding arbitration clause in connection with the making of a
22 residential mortgage loan when it is the borrower's principal dwelling.

3.4244 Defendant Lenders Advantage is licensed as an escrow agent in the State of California, as noted on its escrow documents and it may well be licensed to act as an escrow agent in Washington if it is really the First American Title Company which is licensed in

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SECOND **THIRD** AMENDED COMPLAINT - 31

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1 Washington by the Office of Insurance Commissioner. As such, it was required to adhere to
 2 TILA and other federal lending laws under Washington law in connection with its work as an
 3 “escrow agent” in Washington state. RCW 18.44.301(11). It is therefore charged with knowing
 4 the corresponding federal and state lending laws which regulate the making of federally
 5 regulated mortgage loans as well as knowledge of Washington escrow laws. It either has
 6 intentionally ignored TILA and federal lending laws or it has chosen not to know them and to
 7 act in collusion with lenders such as the PATCH Defendants to violate those laws. Either way,
 8 it violatedacted in violation of the requirements of TILA and the Washington Escrow Agent
 9 Registration Act.

10 3.4345 The PATCH Defendants also are charged with knowing federal and state
 11 lending laws, which include TILA and the express prohibition on the imposition of a
 12 mandatory arbitration clause. It chose to intentionally ignore this prohibition, craft loan
 13 documents that disavow being a loan and colluding with Defendant Lenders Advantage to
 14 impose upon Ms. Cary an unlawful mandatory arbitration clause.

15 3.4446 The PATCH Defendants have made numerous misrepresentations about the
 16 terms of the contract and whether or not it is a loan, as described more completely above. In
 17 addition, it further engaged in unfair and deceptive actions by choosing an escrow agent which
 18 imposed upon Ms. Cary in the escrow documents a mandatory arbitration agreement which was
 19 prohibited by federal law.

20 3.4547 The PATCH Defendants and Defendant Lenders Advantage engaged in these
 21 unfair and deceptive actions in connection with trade or commerce, the operation of their
 22 respective businesses, and they had previously when they took these actions the capacity to
 23 impose an unlawful arbitration agreement upon borrowers in the future and they continue to

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1 have the capacity to impose an unlawful arbitration agreement upon other borrowers at this
 2 time. [RCW 19.86.020; 19.86.093\(c\)](#).

3 [3.4648](#) Ms. Cary was injured by way of the imposition of this unlawful arbitration
 4 agreement because she had to retain and consult with attorneys to make certain that she did not
 5 become required to participate in this unlawful arbitration agreement [and to arbitrate her claims](#)
 6 [against the Defendants](#).

7 [3.4749](#) All of Ms. Cary's injuries and damages were caused by the PATCH Defendants
 8 and Defendant Lenders Advantage and they are directly responsible for those injuries and
 9 damages.

10
 11 Tenth Cause of Action
 12 Objection to Claim
 13 Against PATCH Defendants

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14 [3.4850](#) Ms. Cary incorporates herein by reference as though fully set forth at length
 15 each and every allegation and statement contained in all of the Sections above, including the
 16 Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through [3.4549](#) of
 17 the Causes of Action above.

18 [3.4951](#) Incorporating the prior factual allegations and nine causes of action pled in this
 19 Complaint, Defendant PATCH's [proofProof](#) of [claimClaim](#) as identified in claim number 11,
 20 **Exhibit A**, should be disallowed as a secured claim. Any fees, accrued interest (disguised as an
 21 equity interest or otherwise), should be also disallowed. Should the court disallow this claim in
 22 its entirety.

23
 24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff Ms. Cary prays for the following relief:

26 1. Judgment against all of the Defendants in an amount to be proven at trial for

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recovery of her out of pocket damages, as well as the value of the injuries she has suffered;

2. Treble damages up to \$25,000.00 for each of Ms. Cary's categories of damage and injury as provided under the CPA;

3. Any statutory damages available under federal or state lending laws, including recovery of costs Ms. Cary has already paid through the escrow process;

4. An award of attorneys' fees and costs in an amount to be proven at trial;

5. Disallow Claim 11 in its entirety.

6. Quiet Title in favor of Debtor, against the PATCH Defendants;

7. Rescind the loan made by the PATCH Defendants;

8. For injunctive relief against all of the Defendants to prevent any other

Washington consumers from being harmed by the unlawful, unlicensed business activities of all of the Defendants; and

9. For such other and further relief as the Court deems just and proper.

DATED this 4th day of March June, 2022.

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~~SECOND~~ ~~THIRD~~ AMENDED COMPLAINT - 34

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~~SECOND~~ THIRD AMENDED COMPLAINT - 35